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## **Lawyers' Edinburgh 1908–2008**

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**Abstract**

This paper considers the physical setting of legal practice and education in Edinburgh in 1908 and compares it to the position in 2008. It is a contribution to the centenary celebrations of the Old Edinburgh Club in 2008.

**Keywords**

Law, Lawyers, Legal practice, Legal education, Legal profession, Legal history, Edinburgh, 1908, 2008.

## Introduction\*

A goodly crowd of lawyers joined the Old Edinburgh Club when it was formed in 1908.<sup>1</sup> Fourteen Writers to the Signet (WSs), nine Solicitors to the Supreme Court (SSCs), and at least five advocates appear in the first list of members, along with the prominent and energetic law publisher, Charles Green. The Honorary Vice-Presidents included the Lord Lyon King of Arms, Sir James Balfour Paul LLD, advocate, James Bland Sutherland, past President of the SSC in its centenary year of 1884,<sup>2</sup> and Andrew Murray WS of the well-known firm Murray Beith & Murray WS. So a contribution on the Edinburgh in which all these gentlemen studied, practised and published on the law, and the changes since their time, is an entirely appropriate way of honouring the Club's centenary.

The starting point for this paper was my personal experience of entering lawyers' Edinburgh more than a third of the Old Edinburgh Club's century ago. For ten of the weeks which intervened between my leaving George Heriot's School in June 1974 and starting as a law student at Edinburgh University the following October I worked as an office-boy in the 15-19 York Place offices of Morton Fraser & Milligan WS. It seemed a pretty august establishment, with the dozen partners (all men) established in spacious panelled rooms aloft in the upper stories, while the rest of us, maybe 30 all told, toiled in slightly less salubrious conditions at the street and basement levels.<sup>3</sup> I soon found that the rest of the legal world with which Morton Fraser dealt was within comfortable walking distance of York Place, mostly in and around George Street and Queen Street. The occasional sally also took place across the North Bridge to the courts behind St Giles in the High Street. It was a world that seemed absolutely settled, as if ensconced in its place for ever; and although nothing about it was new - indeed mostly it was a bit shabby, or well-worn - it looked anything but broken. Actually, to a Herioter it all felt rather comfortably familiar.

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\* This paper is based principally on research in the law journals of 1908 and the biographical and address details obtainable from the *Scottish Law Directory*, the *Edinburgh & Leith Post Office Directory*, *Who Was Who*, the Scotland's People website, and the following works: F J Grant (ed), *The Faculty of Advocates 1532-1944* (Scottish Record Society, 1944, henceforth "Grant, *Advocates*"), *Register of the Society of Writers to the Signet* (Edinburgh, 1983, henceforth "*WS Register*") and J B Barclay, *The SSC Story 1784-1984: Two Hundred Years of Service in the College of Justice* (Edinburgh, 1984, henceforth "*Barclay, SSC Story*"). So far as the contemporary position is concerned, the paper was completed in December 2008. I would like to acknowledge the very extensive research assistance of my wife Frances MacQueen (ex-Allan McNeil & Son and Bennett & Fairweather WS), and the considerable help I have also received from a number of other friends and colleagues in the University and the Edinburgh legal profession, each individually acknowledged at appropriate points in what follows. I am also grateful for the help I have received from Alan Barr (Edinburgh Law School and Brodies WS), Karen Bruce Lockhart advocate (ex-Brodies), Professor John Cairns (Edinburgh Law School), Andrew Gibb (Balfour & Manson), Duncan Mackenzie WS (Stuart & Stuart WS), Jonathan Mitchell QC, James Saunders (Shepherd & Wedderburn) and David Sellar (Lord Lyon King of Arms and Edinburgh Law School), as well as from staff in the Edinburgh University Main and Law Libraries and the Edinburgh Room of the Edinburgh Central Public Library.

<sup>1</sup> For what follows in this paragraph see the appendix to the first volume of the *Old Edinburgh Club* series, published in 1909. On the founding of the Old Edinburgh Club see Owen Dudley Edwards, "Rosebery and the birth of the Old Edinburgh Club", *Book of the Old Edinburgh Club* 7 (n.s.) (2008) 3.

<sup>2</sup> See further Sutherland's memoirs, *Random Recollections and Impressions* (Edinburgh, 1903).

<sup>3</sup> The *Scottish Law Directory* for 1974 confirms that there were 12 partners in Morton Fraser & Milligan WS that year (A F Stark, WS, A J Cowan, WS, H A Nicolson, WS, T Dunsire, WS, D G Andrew, WS, A G Muir, WS, J W Wightman, WS, D J McNeil, WS, J N StC Jameson, S A Rae, WS, H J S Henderson, WS, and D L Stewart, WS.) Only Scott Rae remained as a partner in 2008.

Thirty-four years later, the kinds of changes which have overtaken the practice of law in Edinburgh can be illustrated at least to some extent from the experience of Morton Fraser & Milligan. It is now simply called Morton Fraser, having in 2000 cut the name down from The Morton Fraser Partnership adopted in 1996. Its Chief Executive is a woman: six of the 34 partners are female. The firm has offices in Glasgow and London as well as Edinburgh; there are over 200 staff. Its Edinburgh base is no longer York Place but since 2000 (and this is the least of its changes) 30-31 Queen Street. In the near future, however, it will leave the New Town for the Quatermile development between Lauriston Place and the Meadows: a move much more symptomatic of the general changes I want to describe and discuss in this paper.<sup>4</sup>

My first thought for a paper on law for this auspicious occasion was indeed to talk about the changes I personally had seen in the Edinburgh legal environment, assuming perhaps that what I experienced in 1974 was essentially the same as what I would have experienced in 1908. But then I remembered something else I had observed in my time at Morton Fraser, namely that the name it then had was itself a relatively recent creation, only about six years old. In fact, as I later learned, the name Morton Fraser & Milligan reflected a complex genealogy of firm mergers and takeovers that stretched back to at least 1829, which was when the eponymous Morton set up in practice with a James Greig.<sup>5</sup> So the pre-1974 twentieth-century scene was by no means without change for solicitors' firms, just as I knew it had not been in legal education: the full-time LLB Honours degree which I took between 1974 and 1978 was an innovation of 1960.

The project of this paper has thus become one of exploring as far as possible within the limits of the time and sources readily available for the work, what the legal world of 1908 Edinburgh looked and felt like for those who lived in it, and to reflect, in what I fear will be a rather trite way, on the nature of the visible changes that have unquestionably taken place since then. 1908 lawyers' Edinburgh is certainly still there to be seen in 2008; but how much of it will survive the next hundred years is somewhat less clear.

Three places together formed the beating heart of Edinburgh law in 1908, as in 1974: the New Town, the courts, tucked in between St Giles and George IV Bridge in the Old Town, and, just on the other side of the Cowgate valley, Old College on South Bridge. (I exclude Leith which in 1908 had its own legal world, no doubt linked to Edinburgh by much interaction, but none the less deserving separate study in its own right.) The paper takes each of these centres in turn.

### **The New Town: solicitors and advocates**

For our purposes, the New Town can be sub-divided along the lines formed by the two branches of the legal profession, the solicitors and the advocates. The vast majority of solicitors' firms practised in the mainly commercial area marked off by

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<sup>4</sup> See the firm website, <http://www.morton-fraser.com/>, for information on the current firm; I am additionally grateful to current partner George Clark WS for help in dating changes to the firm name.

<sup>5</sup> Information from the firm website, <http://www.morton-fraser.com/about/history.php>. Morton Fraser is one of the few contemporary firms to say anything about its history on its website, and even it is brief.

George Street and Queen Street (with Albyn and York Places) to north and south, and by Charlotte and St Andrew Squares to east and west, plus a significant outlier to the west in Rutland Street and Square.<sup>6</sup> This zone, which also included the parallel lines formed by Young Street, Hill Street and Thistle Street, was almost awash with lawyers' offices, and there were also large numbers of solicitors in each of Castle, Frederick and Hanover Street. The legal tide was held back only by the banks, insurance companies, accountants, and surveyors together with the occasional dress-maker and music teacher. On the other hand, there were no lawyers' offices in Rose Street, and hardly any in Princes Street, Hagart & Burn Murdoch WS being the most conspicuous, at No 140 in the West End; and the only ones I have noted north of the line formed by Albyn Place, Queen Street and York Place were Simpson & Marwick WS at 18 Heriot Row and T J Cochrane SSC at 2 Abercromby Place.

In Frederick and Hanover Streets we should probably imagine mostly sole practitioners' small offices piled on top of each other in the flats up the stairways still characteristic of many of the addresses in these streets. But some, such as Stuart & Stuart WS at 56 Frederick Street and Duncan Smith & MacLaren at No 62 (to both of which we will return), were the sole occupants at their main door addresses. On the east-west line, and especially in Young, Hill, North Castle and Queen Streets, as well as Charlotte Square, there were more multi-partner firms occupying the whole or parts of often substantial houses. The origins of such occupation were individual lawyers' combination of home and office in an earlier period, which may well have resulted from the Writers to the Signet and other solicitors being amongst the first to take up residence in the New Town as it developed around the former Lang Dykes in the late eighteenth and early nineteenth centuries. By 1908, however, these properties had become predominantly offices rather than homes. Presumably in order to be able to afford their addresses the occupying firms were running businesses with higher turnovers, more staff, and more prosperous clients than their colleagues in the Frederick and Hanover Street flats.

The advocates for their part lived slightly further to the north and west, in the grander and still today altogether much more domestic terraces, places and circuses such as Heriot Row, India Street, Moray Place and so on. But the advocates' houses remained their places of business or chambers, just as once had been the case with the solicitors. In part this explains the advocates' clustering so near the solicitors rather than by the courts in the Old Town<sup>7</sup> or on the North, South or George IV Bridges. It may also suggest that the removal of the advocates in general to the New Town post-dated that of the solicitors. The distinguished judge Lord Macmillan, called to the bar in 1897, explained in his memoirs: "An advocate in Edinburgh ... must live in a circumscribed quarter of the City north of Princes Street, where he is readily accessible to solicitors for the delivery of papers and for holding consultations."<sup>8</sup> Those advocates who in 1908 lived far away in Morningside Park, Whitehouse

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<sup>6</sup> There were a few firms in Princes Street but none at all in Rose Street.

<sup>7</sup> One advocate (Charles Angus Macpherson, called 1901) lived in 1 Cockburn Street in 1908. His father owned the Cockburn Hotel at the same address.

<sup>8</sup> Lord Macmillan, *A Man of Law's Tale*, (London, 1952), p. 43. For his admission on 5 November 1897 see *ibid*, pp. 29-32.

Terrace, Braid Hills Road and Craiglockhart Terrace<sup>9</sup> were therefore most probably retired or non-practising members of the bar.

Practising advocates occasionally intruded upon the solicitors' patch south of Queen Street Gardens: in 1908 eight of them lived in Castle Street,<sup>10</sup> one in splendid isolation at 63 Frederick Street,<sup>11</sup> and a small group had what may have been shared rooms or separate small flats at 116 Hanover Street.<sup>12</sup> Generally, however, these were young men hoping they were on their way up. Macmillan remarks:

The progress of the successful advocate is marked by his residential transitions. I followed the conventional course by living first in lodgings, then for the first four years of my married life in our flat [in Nelson Street]; a move in 1905 to 23 Northumberland Street – that 'long, unlovely street' – signalled the advance of my fortunes. And, finally, in 1910, we reached the dignity of Moray Place, the goal of ambition in those days and then still undesecrated by mutilation and the invasion of offices and nursing homes.<sup>13</sup>

Solicitors' firms were generally not large. Firm names were often those of the actual partners; only rarely did more than three individual surnames appear, while there were very large numbers of sole practitioners. This meant that firm names came and went. But some survived their original eponyms, presumably because sons succeeded fathers in the business or the name helped ensure business continuity; and a number in the 1908 directory have lasted, more or less, down to 2008 or very nearly so. A provisional list can be found in the Appendix, which also lists their places of business then and now.

For only two could complete continuity of location be claimed down to the time at which I began to write this paper. Murray Beith & Murray WS (slightly rebranded to Murray Beith Murray) were still at 43 Castle Street, where they had been since about 1861, although their business had expanded since 1908 also to incorporate Nos 41 and 39 (the latter the former house of Sir Walter Scott).<sup>14</sup> Skene Edwards & Garson (abbreviated to Skene Edwards) were at 5 Albyn Place, where they had been

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<sup>9</sup> Respectively, Alexander Taylor Innes LLD (called 1870), William Ivory (1849), James Ogilvie Kemp (1889), Alexander Stuart (1883; residing in Lochrin House). For Taylor Innes ("that most cerebral of Free Church lawyers") as author of *The Law of Creeds in Scotland* 2nd edition (Edinburgh and London, 1902) and protagonist in the Free Church controversies of the later nineteenth century finally resolved in the great case of *Free Church of Scotland v Lord Overtoun* (1904) 7 F (HL) 1, see Lord Rodger of Earlsferry, *The Courts, the Church and the Constitution: Aspects of the Disruption of 1843* (Edinburgh, 2008), 7, 35, 105, 106, 113-114, 126 note 68; and C Kidd, *Union and Unionisms: Political Thought in Scotland, 1500-2000* (Cambridge, 2008), 108-109, 238-241.

<sup>10</sup> Napier Armit (called 1904), David Pinkerton Fleming (1902), Alan Bruce Strachan Carnegie (1902) and Archibald MacGregor Trotter (1904) at 11 (South) Castle Street, Hector Burn Murdoch (1905) and James C Hamilton (1907) at 18 (South) Castle Street, and John Charles Fenton (1904) and George Hart (1899) at 53 (North) Castle Street. Of these only Hart might have had cause to worry that his address was not quite what one of his length of practice should have.

<sup>11</sup> Robert B King (called 1906).

<sup>12</sup> Stair Gillon (called 1903), Philip Hamilton Grierson (1907), John Gordon Jameson (1903), and Charles Lockhart Riach (1906).

<sup>13</sup> *Man of Law's Tale*, p. 44.

<sup>14</sup> Before 1861 Murray & Beith (as they then were) were at 50 Castle Street.

since around 1888.<sup>15</sup> For each of the firms, however, the remarkable continuity of place was broken or lost in September 2008: Murray Beith Murray moved to offices in Glenfinlas Street, while Skene Edwards was subsumed in Morton Fraser. Probably the firm closest now to its 1908 home is Bell Scott, which has merely moved from one side of Hill Street to the other, while Balfour & Manson has shifted one block westwards in going from their Hanover Street address in 1908 to their present (much larger) one in Frederick Street.<sup>16</sup> Alex Morison & Co (now Morisons) has moved from mid- to west Queen Street, but their current offices are in Erskine House at No 68, a greater remove from No 33 than might appear at first sight to the uninitiated.<sup>17</sup>

Many of the 1908 firms had antecedents stretching back well before 1908: for example, Dundas & Wilson celebrated its bicentenary as long ago as 1959,<sup>18</sup> and both Tods Murray & Jamieson WS (now Tods Murray) and the Drummonds part of Drummond Miller also claim eighteenth-century origins.<sup>19</sup> The firms of Burness<sup>20</sup> and Stuart & Stuart<sup>21</sup> stretch back to the early nineteenth century, while Morton Fraser celebrated its 175th anniversary in 2004, tracing its descent from the entry of Charles Morton into partnership with James Greig in 1829; but the genealogy could justifiably have been taken still further back via its Fraser line of descent.<sup>22</sup> The founder of John C Brodie & Sons of 5 Thistle Street was John Clerk Brodie (1811-1888), who was admitted to the WS Society in 1836, his father and grandfather (both named Thomas) having also been admitted in 1787 and 1739 respectively. John rose to become Deputy Keeper of the Signet 1882-1887; his sons were Sir Thomas Dawson Brodie (1832-1896, admitted WS 1857) and John Sneyd Brodie (1850-1875, admitted WS in 1873).<sup>23</sup> Lindsay Howe & Co WS of 32 Charlotte Square (predecessors of the modern Lindsays) appears to have been founded by John Mackenzie Lindsay (1792-1873, admitted WS 1814) and carried forward by his apprentice Alexander Howe (1820-1907, admitted WS 1849); the latter's death led to the reconstitution of the firm under the long-established name by the four surviving partners in October 1907.<sup>24</sup>

Several of the other firms mentioned in the Appendix began to flourish late in the Victorian era.<sup>25</sup> Simpson & Marwick began as Fodd Simpson & Marwick WS at 116 George Street in 1886, although founding partner J Yeaman Fodd had

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<sup>15</sup> The firm was founded in 1858 by W F Skene, for whom see W D H Sellar, "William Forbes Skene (1809-92): historian of Celtic Scotland", *Proceedings of the Society of Antiquaries of Scotland* 131 (2001) 3-21. For the first thirty years of its existence the firm was located in Hill Street.

<sup>16</sup> Balfour & Manson were however in Castle Street in the 1920s: see below, 000.

<sup>17</sup> See Gifford et al, *Buildings of Edinburgh*, 321.

<sup>18</sup> David M Burns, *Dundas & Wilson CS: the first two hundred years* (Edinburgh, 1987).

<sup>19</sup> See the Tods Murray and Drummond Miller websites, <http://www.todsmurray.com/our-approach/brief-history.htm> and <http://www.drummondmiller.co.uk/public/reception-temp.aspx?MenuItems=37>.

<sup>20</sup> For information on which I am grateful to current partner James McLean WS; see also *WS Register*, 44.

<sup>21</sup> I am indebted to Gordon Cameron WS, current partner of Stuart & Stuart, for extensive information on the history of his firm.

<sup>22</sup> See the firm website, <http://www.morton-fraser.com/about/history.php>; and for the origins of the "Fraser" element (stemming from the firm of Fraser Ballingall & Co), see further below, 000.

<sup>23</sup> For all the WS Brodies, see *WS Register*, 37-38.

<sup>24</sup> Information from John Elliot WS of the successor firm Lindsays, supplemented by information about Lindsay and Howe obtained from the *WS Register*, 152, 179.

<sup>25</sup> See also the history of Cochrane & Blair Paterson (T J Cochrane SSC in 1908) in Alistair R Brownlie, *The Treasured Years* (Kilmarnock, 2006), 150-161.



disappeared from the firm name and the firm had moved to 14 Hill Street by 1891. There was a strong west coast connection: James Simpson (1858-1934, knighted in 1920) was the son of a writer in Largs and graduated MA, LLB at Glasgow before being admitted as an SSC in 1885.<sup>26</sup> David Marwick (admitted to the WS Society in 1885) was the son of Sir James Marwick SSC (admitted 1858), an Orcadian who became town clerk of first Edinburgh from 1860, then (from 1873 until his retirement in 1903) Glasgow.<sup>27</sup> The firm, which moved to Heriot Row around 1895, flourished on the business brought in by the Glasgow Corporation connection and on its involvement as solicitors for the “Wee Frees” in the great litigation about the property and endowments of the Free Church of Scotland finally decided in favour of their clients by the House of Lords in 1904.<sup>28</sup> Balfour & Manson was founded in 1888 by William Balfour (SSC 1899) and his nephew Peter Manson, both men being, like Sir James Marwick, of Orcadian origin.<sup>29</sup> Balfour and Manson were also, like James Simpson and David Marwick, still practising in 1908. Other firms were by contrast very recent creations: for example, in the spring of 1908 Allan McNeil, already well-known as a writer on commercial law matters as well as head of the law department of the Bank of Scotland, set up in practice on his own account at 19 Young Street.<sup>30</sup> His firm would endure there until a rather sticky end in 1979.

It is also possible to detect firms which would at some point after 1908 merge, and sometimes merge again with others, and change addresses, while through all the changes having underlying continuity as a business entity. Thus Dundas & Wilson, at 16 St Andrew Square in 1908, merged with Davidson & Syme WS in 1972, the new firm occupying the offices at the south-west corner of Charlotte Square where Davidson & Syme had been in 1908.<sup>31</sup> The new conglomerate would settle and expand there, the Davidson & Syme element of its name being eventually dropped in accordance with the original merger agreement.<sup>32</sup> In 1922 Joseph Robert MacLagan Wedderburn of Carment Wedderburn & Watson WS, 2 Glenfinlas Street, went into partnership with Alfred Shepherd of Guild & Shepherd, 16 Charlotte Square, forming at the latter address the still-flourishing Shepherd & Wedderburn WS.<sup>33</sup> Both men

<sup>26</sup> Biographical information on Simpson from *Who Was Who 1929-1940*.

<sup>27</sup> See the pen portrait of Sir James in *Scots Law Times*, vol 10, 7 June 1902 (News section, 17) and the obituary following his death in March 1908 (vol 15, 28 March 1908 (News section, 177); and Barclay, *SSC Story*, 254-255.

<sup>28</sup> Information on Simpson & Marwick courtesy of Peter Anderson and Mike Wood, current partners in the firm, and Sir David Edward, erstwhile bar apprentice there. See *Free Church of Scotland v Lord Overtoun* (1904) 7 F (HL) 1, and further Rodger, *The Courts, the Church and the Constitution*, 91-137; Kidd, *Union and Unionisms*, 236-242.

<sup>29</sup> Information from Ian Balfour, former partner of the firm and grandson of founder William Balfour.

<sup>30</sup> (1908) 16 SLT 5; (1908) 24 SLR 148. It may be coincidence that McNeil published an article on the new Companies Act 1907 in the June issue of the *Scottish Law Review* (pp 125-129), thereby reminding his brethren of his expertise in this area. He had co-authored a book on banking law with William Wallace (first edition 1894, second edition 1899) as well as producing a manual on company law in 1901. A book on bills of exchange, cheques and promissory notes would follow in 1910. For his full career, see the obituary in *Scots Law Times*, 7 May 1938 (News section) 97 (date of death 29 April 1938) and further below, 000.

<sup>31</sup> Dundas & Wilson left St Andrew Square, where they had been since 1842, to go to 1 St Colme Street in 1965: Burns, *Dundas & Wilson*, 33. On Davidson & Syme, see Alastair Blair, *Davidson & Syme WS: Two Centuries of Law* (Edinburgh, 1980).

<sup>32</sup> Burns, *Dundas & Wilson*, 34; Blair, *Davidson & Syme*, 83-86. For the firm’s move to its present location in Saltire Court, see below, 000.

<sup>33</sup> 15 Charlotte Square was acquired in 1923. I am very grateful to Tom Drysdale (ex-Shepherd & Wedderburn) for detailed information on the firm’s history.

were partners in their previous long-established firms in 1908. J & F Anderson WS of 48 Castle Street and Strathern & Blair WS of 12 South Charlotte Street, also both long-established in 1908 with antecedents stretching back to the end of the eighteenth century, formed Anderson Strathern in 1992.<sup>34</sup> The unusually long-winded Morton Smart Macdonald & Prosser WS (six partners), based at 19 York Place in 1908 and itself the product of earlier mergers, in 1961 absorbed its neighbour J & J Milligan (at 15 York Place in 1908), and then in 1968 Fraser Stodart & Ballingall WS (based at 16 Castle Street in 1908), thus producing the Morton Fraser & Milligan whose York Place portals I graced in 1974. Drummond and Reid WS (at 21 Charlotte Square in 1908) became in due course Drummond & Co WS in Moray Place, absorbed Pairman Miller (50 Queen Street in 1908) in 1991 and was then renamed Drummond Miller.<sup>35</sup> John C Brodie & Sons became Brodie Cuthbertson & Watson WS before emerging finally as Brodies on 1 January 1974 – an early, possibly the first, example of the modern tendency to abbreviate the firm name to one or at most two surnames.

What work did these solicitors do in 1908?<sup>36</sup> Specialism like that of Allan McNeil in commercial law was probably a rarity: the ordinary Scottish solicitor was a general practitioner, turning no work away. Conveyancing, wills and executries, the administration of companies, trusts and client investments, and the drafting of contracts were probably the lifeblood of most, while a good number also engaged in court work, both civil and criminal. The basis of the larger firms was usually the affairs of the wealthy landed classes: the management of their estates, trusts and investments. For all solicitors a key site in the New Town was the Register House campus at the east end of Princes Street, home not only of the Register of Sasines (the land register) and other registers of vital significance in everyday practice, but also of the bureaucracy supporting the operation of the courts.<sup>37</sup> Although support staff - clerks, book-keepers and messengers - were common, there was little technology: typewriters (and carbon paper for copies) were massively expensive, while office telephones and telegraph addresses were also virtually unknown.<sup>38</sup> The business of a solicitor would not necessarily be purely local: court firms acted as correspondents for out-of-town colleagues in Court of Session matters, while the legal concerns of wealthy clients might well stretch across the whole country. But much of the work of the small firms and sole practitioners must have reflected the daily lives and concerns

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<sup>34</sup> Douglas F Stewart and David M Burns, *A Lawful Union: the Annals of J & F Anderson WS and Strathern & Blair WS, who merged on First September 1992* (Edinburgh, 1998). I am grateful to Robert Carr of Anderson Strathern for drawing my attention to this work. J & F Anderson WS is the employer of the clerk John Inglis whose diary (Ena Vaughan (ed), *A Victorian Edinburgh Diary* (Edinburgh, 1984)) gives an impression of life in a leading Edinburgh law firm around 1880.

<sup>35</sup> <http://www.drummondmiller.co.uk/public/reception-temp.aspx?MenuItems=37>.

<sup>36</sup> See for much valuable background John W Cairns, "Historical introduction", in Kenneth Reid and Reinhard Zimmermann (eds), *A History of Private Law in Scotland* (2 vols, Oxford, 2000), vol 1, especially at 124-130, 155-159, 181-182; *The Laws of Scotland: Stair Memorial Encyclopaedia* vol 11 (Edinburgh and London, 1992) paras 1102-1106, 1126-1141; Alan Paterson, "The legal profession in Scotland: an endangered species or a problem case for market theory?", in R L Abel and P S C Lewis (eds), *Lawyers in Society volume one: The Common Law World* (Berkeley, Los Angeles and London, 1988), 76-122, especially at 77-94.

<sup>37</sup> The Lyon Court was also located in Register House in 1908, but today is in New Register House.

<sup>38</sup> The telephone number of Murray-Dawson & Darling SSC, of 50 Queen Street, was 3434, and their telegraphic address 'Opus, Edinburgh'. More imaginative still, and possibly showing a mentality a century in advance of its time, was the Leith firm of Galloway Davidson & Mann SSC (33 Bernard Street), phone number 529 Leith, telegraph address 'Legality, Leith'. In their possession of communications technology, however, these firms were the exceptions to the rule.

of Edinburgh people and Edinburgh businesses, thoroughly embedding the practice of law in the rising and falling cycles of the city's fortunes.

1908 seems to have been part of a lean period, but the Edinburgh correspondent of the monthly *Scottish Law Review* struck a hopeful chord in May (albeit more for court than chamber practitioners) when talking about the opening of the Scottish National Exhibition in Saughton Park:

Improved trade prosperity is looked for in Edinburgh through the Exhibition leading to money being circulated in the city, and it may be hoped the legal profession will have a share in any improvement which is going. Exhibitions which have of recent years been held in Scotland have provided a few Court of Session suspensions and interdicts; and it may be taken as of good omen that one of such actions has come up before the Exhibition opened its doors. A firm of London cigarette makers obtained on the day preceding the opening an interim interdict against a firm of caterers selling any other cigarettes than the complainers', who alleged the existence of a contract between the parties.<sup>39</sup>

Perhaps reflecting the lean-ness of the times, 1908 saw an outbreak of concern about dishonest solicitors (you may say that perhaps it would be more interesting if it had been a year when lawyers were held up to the public gaze as paragons of virtue). In February the *Scottish Law Review's* Edinburgh correspondent noted that the recent death of a respected WS had been hastened by the failure of the firm in which he had become a sleeping partner, the "unlooked-for catastrophe" being due "to the defalcations of the junior partner ... one he trusted."<sup>40</sup> In March, the same correspondent captured a poisoned atmosphere for his readers:

During the month just ended the skeleton in our legal cupboard has resumed activity in the rattling of its grisly bones. Defaulting law agents in different parts of Scotland within recent years have been so numerous that public confidence in the integrity of the profession cannot be looked for, and, unfortunately, the capital, the headquarters of law, cannot be pointed to as a monument of professional integrity, for of late the sheep of the flock who have turned out black have not been few. With each new discovery of a defaulter the public distrust becomes more deeply rooted, and, although the press has not so far deemed it necessary to cast a headline "Another lawyer in trouble" for the paragraphs chronicling the discoveries, readers of the paragraphs mentally supply the word "another", and we are getting into the way of taking the discoveries as a matter of course. Distrust is not confined to the lay public, for among agents themselves, the first breath of a suspicion attaching to an unnamed member of their own profession leads to much private and confidential speculation as to who that member may be. There have been within the month two local practitioners who have gone under, one of them leaving a five-figure financial history behind him, and before it became definitely known who the two really were a most astonishing assortment of names of probables was privately discussed. When things are so bad that legal men are distrusting numbers of their fellows, a spirit of confidence in the

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<sup>39</sup> "Notes from Edinburgh", *Scottish Law Review* 24 (1908), 112.

<sup>40</sup> "Notes from Edinburgh", *Scottish Law Review* 24 (1908), 48. The WS was John Brown Douglas, who died on 2 January aged 56, and his firm was J B Douglas & Mitchell WS of 45 Frederick Street.

profession is not to be looked for on the part of an already prejudiced lay public.<sup>41</sup>

Later in the year the *Review* carried articles on solicitors' accounts and accounting, and on the audit of trust accounts, explicitly reflecting on fraud and dishonesty in the profession and its indifference to the principles of book-keeping, and arguing for more systematic training of legal apprentices in these matters.<sup>42</sup> But in the December issue the Edinburgh correspondent told of the recent removal from the lists of the Solicitors to the Supreme Court of the names of two of its members (perhaps the same two persons referred to in his March pages). Both had recently departed Edinburgh for the United States, leaving behind "serious allegations ... as to the dealings of the twain with clients' moneys." At least one of the two had some lingering sense of honour, however: he "wrote to the president of the [SSC] Society from an hotel in America tendering his resignation, but at the same time reserving all claims competent to his wife and children on the Widows' Fund."<sup>43</sup> The *Review* does not record the outcome of this tender, or the reaction to it of the presumably otherwise abandoned wife and children.<sup>44</sup>

The fundamental problem for the solicitors' branch of the profession was the absence of any powerful regulatory body to watch over it as guardian of the public interest; the gap would not really be plugged until the creation of the Law Society of Scotland in 1949. There were instead numerous societies of solicitors around the country, with the most prominent in Edinburgh being the Writers to the Signet and the Solicitors in the Supreme Courts, but these were mostly concerned with admission to their own ranks and the protection of their privileges, rather than the exercise of any regulatory or disciplinary jurisdiction over members. The governing statute was the Law Agents (Scotland) Act 1873 under which there was a centralised system of registration of law agents with the Clerk of Session based at Register House, but again this had no further regulatory element other than requiring the passing of professional examinations administered by the Incorporated Society of Law Agents before admission to practice.

The legal profession in 1908 of course consisted entirely of men. But the Edinburgh lawyers' world had just begun the long process of ceasing to be entirely masculine. Quite apart from female clients, feminists were pressing as hard at the gates of the law as they were in pursuit of the vote and entry into other professions, and they were making some headway, at least in Edinburgh. Women could be found in growing numbers in law offices, working in a clerical capacity which may sometimes have stretched to what we would now describe as the para-legal (although marriage would lead to the end of their office careers).<sup>45</sup> Three of the tasks women certainly were performing in Edinburgh law in 1908 were the delivery of papers from

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<sup>41</sup> "Notes from Edinburgh", *Scottish Law Review* 24 (1908), 70-71.

<sup>42</sup> David Murray, "Solicitors' accounts and accounting", *Scottish Law Review* 24 (1908) 249-256; RMC, "Audit of trust accounts", *ibid*, 277-282.

<sup>43</sup> "Notes from Edinburgh", *Scottish Law Review* 24 (1908), 298 (both quotations).

<sup>44</sup> The two were Robert Scott Chalmers (admitted to the SSC in 1904 and company secretary to the New Engine Syndicate Ltd at its offices in 13 Rutland Street) and Frank Montgomery Henderson Young (1896, a sole practitioner at Hanover House, 45 Hanover Street). Information about their addresses from the Edinburgh Post Office Directory for 1907; the names are absent from the 1908 edition.

<sup>45</sup> *Scots Law Times*, 5 December 1908, News, 141.

offices to counsel, taking shorthand notes of court proceedings, and acting as interpreters in court.<sup>46</sup> The pioneering efforts of Sophia Jex-Blake in medicine in the 1860s and 1870s had led in 1892 to the authorisation of admission for women to graduate in Arts from Edinburgh University.<sup>47</sup> In 1908 Eveline MacLaren and Josephine Gordon Stuart, who each already held Edinburgh MAs, were undertaking the further studies that would lead to them being the first women to graduate LLB from the University in 1909.<sup>48</sup> Both were born in November 1883 and were daughters of practising solicitors. Josephine Gordon Stuart's father was Joseph Gordon Stuart LLD, WS, partner with his cousin George Malcolm in the firm Stuart & Stuart WS at 56 Frederick Street;<sup>49</sup> while Eveline MacLaren's father was Duncan MacLaren SSC, a sole practitioner practising under the firm name Duncan Smith & Maclaren two doors downhill at No 62.<sup>50</sup> The proximity of the fathers' practices may well be significant of social as well as business links between them. So the women probably enjoyed at least some concerted support within the profession around the west side of north Frederick Street.

Although apparently "it was only after considerable resistance on the part of the university authorities that the two women were admitted" to the Law Faculty,<sup>51</sup> their first entry into the occasionally rowdy Law classes at Old College was apparently greeted with cheering rather than hostility from their male colleagues.<sup>52</sup> The examiners were also favourably impressed: Josephine was placed first in the Administrative Law class, second in both Scots and Civil Law, and ninth in

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<sup>46</sup> *Scots Law Times*, 5 December 1908 (News), 141-142 (which includes this: "This week a jury trial has been proceeding before Lord Guthrie in which many of the witnesses were Poles. The interpreter was a young girl with her hair hanging down her back. She appeared to perform her duties to the satisfaction of all concerned.") See also Barclay, *SSC Story*, 219.

<sup>47</sup> See William M Gordon, "The right of women to graduate in medicine – Scottish judicial attitudes in the nineteenth century", *Journal of Legal History* 5 (1984) 136-151, republished in the author's collection, *Roman Law, Scots Law and Legal History: Selected Essays* (Edinburgh Studies in Law, 2007), 179-193 (discussing the background, law and aftermath of *Jex-Blake v The Senatus Academicus of the University of Edinburgh* (1873) 11 M 784); and A Logan Turner (ed), *History of the University of Edinburgh 1883-1933* (Edinburgh, 1933), 40-43.

<sup>48</sup> Eveline first matriculated in the University in October 1901 and graduated MA in 1904; Josephine's first matriculation was in October 1903 and she graduated MA in 1907, having begun her LLB studies in October 1906. Their MA studies therefore overlapped only in session 1903-04, although they were the same age. See further my "Scotland's first women law graduates: an Edinburgh centenary", *Miscellany VI* (Stair Society vol 54, Edinburgh, forthcoming).

<sup>49</sup> See I M Nicoll, M M Stuart and J G S Cameron, *A Stuart Story 1770-1980: As Told by Some Descendants for Their Descendants* (privately printed, 1981), 42 (JGS), 72-73 (GMS). JGS's LLD was an honorary one from St Andrews University. For Josephine, known as "Bunty", see *ibid*, 44-48. She had two older sisters and a younger brother.

<sup>50</sup> On MacLaren's death at the age of 73 in 1924 he was described as "one of Scotland's oldest and leading lawyers" (*Scots Law Times* (1924) (News section), 200. Eveline was one of six daughters, and there were also two sons.

<sup>51</sup> The evidence for this is a letter from Josephine's son Joseph Gordon Stuart Cameron WS (partner in Stuart & Stuart WS) published in *Scots Law Times*, (1982) (News section), 330, and presumably reflects what his mother had told him. The University records show that the women applied together to the Law Faculty in October 1906 and were finally admitted in March 1907, subject to the condition that they took the class of Forensic Medicine extra-murally. In the meantime there had been several exchanges on the matter between the Faculty, the Senatus Academicus and the University Court, although without any sign that this was due to anything more than the University's ponderous decision-making structures. See further MacQueen, "Scotland's first women law graduates", 000-000.

<sup>52</sup> *Ibid*. For the "possibilities of disorder on the part of a foolish and irresponsible minority" in the Law classes, see James Mackintosh, "Reminiscences of an emeritus Professor of Law", *University of Edinburgh Journal* 10 (1939-40) 14-19. On Mackintosh, see further below, 000.

Conveyancing.<sup>53</sup> The Dean of the Faculty of Law, Professor Sir Ludovic Grant, praised his two female students in somewhat elephantine but nonetheless sincere and glowing terms in a testimonial for Josephine written in June 1909:

As events proved, two ladies better qualified to lead the van could not have been found. They acquitted themselves with signal brilliance and distinction, and made it abundantly evident that if courtesy is ceasing to compel obedience to the old rule “*place aux dames*” merit may still compel it.<sup>54</sup>

But the Whole Court of Session had ruled in 1901 that “inveterate custom” precluded women taking the examinations of the Incorporated Society of Law Agents and being admitted as law agents in Scotland.<sup>55</sup> This was despite the 1873 Act expressly referring to “persons” rather than “men” as those entitled to enter the profession and the Society’s seeming neutrality on the question: it did “not conceive it to be their interest or duty to maintain that women ought not to be enrolled as law agents.”<sup>56</sup> As a result, no matter how brilliant Eveline, Josephine and their successors might be, the path to direct acting by women for paying clients remained barred by the court’s “inveterate custom”.<sup>57</sup> Another opportunity did exist, however, in the Edinburgh Legal Dispensary which since its foundation in 1900 by John Coldstream WS had offered at the Canongate Tolbooth free advice from lawyers to all those who wished it. At its ninth annual general meeting held in January 1908 women with legal skills were publicly invited to involve themselves in its advisory work – although with what success I do not know.<sup>58</sup>

### The courts in the Old Town

We may now turn fully from the New Town to make a walk up the Mound (along with the judges and advocates whose daily journey this was too, except on Sundays), to give some attention to the courts over in the Old Town. As we will shortly see, this climb from the New to the Old Town was also traversed every working day by court and library-bound solicitors and, in the morning and the late afternoon, by the law

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<sup>53</sup> First in the Scots Law class was J A Lillie (later sheriff and legal author), who attributed his success in besting the formidable Miss Stuart to a special revision technique picked up from his banker cousin Tom: see Lillie’s *Tradition and Environment in a time of change* (Aberdeen, 1970), 36-37.

<sup>54</sup> See Nicoll, Stuart and Cameron, *A Stuart Story 1770-1980*, 48, for the text of this testimonial, the original of which appears to be no longer extant.

<sup>55</sup> *Hall v Incorporated Society of Law Agents* (1901) 3 F 1059.

<sup>56</sup> *Ibid.*, 1060.

<sup>57</sup> Note also the contemporary case of *Nairn v University Courts of St Andrews and Edinburgh*, in which an Extra Division of the Court of Session had held on 16 November 1907 that women graduates of the Scottish universities were not entitled to vote in the election of a Member of Parliament for their university (1908 SC 113), a decision affirmed by the House of Lords on 10 December 1908 (1909 SC (HL) 10).

<sup>58</sup> For the foundation of the Edinburgh Legal Dispensary (which later moved to its present location in Old College), see Barclay, *SSC Story*, 270. Coldstream conceived of the Dispensary in analogy with medical dispensaries: just as the latter were about preventive medicine, the legal dispensary would prevent hardship and litigation arising from disputes by the pursuit of amicable settlements (see a note from one of the founding members published in *Scots Law Times*, 11 April 1925 (News section), 82). For Coldstream (1842-1909), see *WS Register*, 63, and obituary notices in *Scottish Law Review* 26 (1910), 12, 19, and *Scots Law Times*, 31 December 1909 (News), 166. He seems never to have been in private practice but to have pursued a mainly unsuccessful political career as a Liberal as well as various charitable and philanthropic causes, of which the Dispensary was the most enduring. He also lectured and published on Sheriff and Court of Session procedure, having been for a time assistant Clerk of Session.

apprentices heading to and from the law lectures at Old College on South Bridge. Along their way the pedestrians might well pass the doors of the main law publishers: William Hodge & Co at 8 North Bank Street, and William Green & Sons at 2 and 4 St Giles Street, presided over by the energetic Charles Green (as already noted, a founder member of the Old Edinburgh Club).<sup>59</sup> The Mound was thus a familiar part of lawyers' Edinburgh in 1908, but the Register House location of the courts' administration meant that North Bridge was also an important communication link between the New Town and the courts. A writer in the *Scottish Law Review* noted the hazards to the delivery of papers to court by "bag and barrow" resulting from exposure to "the ravages of the elements and to the dangers of vehicular traffic as they now are";<sup>60</sup> an observation still made by all crossing the North Bridge even on a pleasant summer's day.

The environment of the courts is perhaps better known than that in the world of the solicitors, since there have been many accounts of it, most of them very frequently quoted;<sup>61</sup> so I will spend somewhat less time trying to evoke the general atmosphere of the time and place, tempting though it is, and concentrate instead on aspects particular to 1908 or which have attracted less attention and comment than they perhaps deserve.

The centre of it all was of course the complex set of buildings facing and behind Parliament Square, where lay the rooms of the Court of Session and the High Court of Justiciary, the Parliament Hall and the Advocates Library.<sup>62</sup> Within these walls the advocates and judges pursued their professional careers and handled the business brought before them. But just as that group of lawyers had a significant presence in the New Town, so too were the solicitors also highly visible in and around the court precincts. Quite apart from the presence of individuals in court instructing and supporting counsel, the palatial headquarters and libraries of the Writers to the Signet and the Solicitors to the Supreme Court – the two principal Edinburgh solicitors' societies – flanked and indeed were physically connected to Parliament House, which must have ensured a pretty constant traffic and mingling of the two branches of the profession around Parliament Square for both business and social purposes. The two telephones to be found in the SSC Library seem to have been a particular magnet for all lawyers working in Parliament House.<sup>63</sup>

Three historic and substantial libraries – the Advocates, the Signet and the SSC, in descending order of seniority – also more than justified the lawyers' claims to be a learned profession, with the Advocates and the Signet Libraries in particular also being homes for scholars from outside the law.<sup>64</sup> In 1908 the medieval MSS of the Advocates Library were being catalogued by Miss Catherine R Borland, and the Gaelic ones by Professor Donald Mackinnon, the first holder of the Chair of Celtic at Edinburgh University, while Mr C G Cash FRSGS was cataloguing the MS maps of

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<sup>59</sup> On Green see the obituary notices in *Scots Law Times* 17 January 1920 (News) 5; *Juridical Review* 32 (1920) 1-5.

<sup>60</sup> Vol 24 (1908) 296.

<sup>61</sup> Macmillan, *Man of Law's Tale*, 25-50, and Lillie, *Tradition and Environment*, 70-91, are especially relevant for Parliament House and practice at the bar in the period around 1908.

<sup>62</sup> For a lavishly illustrated account of the development of the complex of buildings, see The Hon. Lord Cullen, *Parliament House: A Short History and Guide* (Edinburgh, 1992).

<sup>63</sup> Barclay, *SSC Story*, 112-113.

Pont, the Gordons of Rothiemay and Adair. The three librarians were notable and influential figures in their own right: W K Dickson in the Advocates Library, J A Minto in the Signet Library, and C A Malcolm in the SSC Library.<sup>65</sup> The interests of the advocates themselves were not limited to the law: the Library had an advisory committee on its music collections, convened by Marcus Dods advocate, who would later become father of the future conductor of the same name but, more importantly in the context of 1908, was the son and grandson of eminent theologians also of the same name.<sup>66</sup>

In addition to the Parliament Square complex, just around the corner on George IV Bridge stood the Edinburgh Sheriff Court, a building erected to a design by David Bryce that “combined a restrained palazzo central section with the more forceful element of single-bay flanking wings with attached columns”.<sup>67</sup> It was on what is now the site of the National Library of Scotland and so more or less backed onto and over the Advocates Library and Parliament House: “a cuckoo in the bibliographic nest”, as Iain Gordon Brown has memorably put it, because the site had in fact belonged to the Faculty of Advocates and was planned for library use until sold to allow the construction of the court building in the 1860s.<sup>68</sup> In the sheriff court solicitors had rights of audience and handled all stages of court activity in the vast majority of cases, although the sheriff and sheriffs-substitute before whom they pleaded were all drawn from the ranks of the advocates.<sup>69</sup> 1908 was a busy, indeed revolutionary year, as sheriffs and pleaders struggled to come to terms with the major changes wrought in the court’s jurisdiction and procedure by the Sheriff Courts (Scotland) Act 1907. At the beginning of 1909, a commentator noted that “[i]n the Sheriff Courts throughout Scotland there has been an increase of work owing to the operation of the Act ... In some of the busier Courts ... it is being found difficult to keep pace with the work.”<sup>70</sup>

The same was not true of the courts and practitioners back in Parliament House, however. The Edinburgh correspondent of the *Scottish Law Review*, who was clearly a Court of Session practitioner, complained in February that “what work is

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<sup>65</sup> On Dickson see P Cadell and A Matheson (eds), *For the Encouragement of Learning: Scotland’s National Library* (Edinburgh, 1989), 233 et seq; on Minto see G H Ballantyne, *The Signet Library and its Librarians* (Edinburgh, 1979), 136-144; and on Malcolm see *ibid*, 146-153, and Barclay, *SSC Story*, 123. Malcolm became Secretary of the Old Edinburgh Club 1943-1953.

<sup>66</sup> *Scots Law Times*, 28 January 1909 (News section), 12. Marcus Dods (1874-1935) was called to the bar in 1904 and became a sheriff-substitute first at Airdrie (1924) and then Glasgow (1928). For his more famous progenitors see the relevant entries in the *Oxford Dictionary of National Biography* (ODNB); for his son, consult Wikipedia ([http://en.wikipedia.org/wiki/Marcus\\_Dods\\_\(musician\)](http://en.wikipedia.org/wiki/Marcus_Dods_(musician))).

<sup>67</sup> Miles Glendinning, Ranald MacInnes and Aonghus MacKechnie, *A History of Scottish Architecture from the Renaissance to the Present Day* (Edinburgh, 1996), 269.

<sup>68</sup> See J H A Macdonald, *Life Jottings of an Old Edinburgh Citizen* (Edinburgh, 1915), 370; Iain Gordon Brown, *Building for Books: The Architectural Evolution of the Advocates’ Library 1689-1925* (Aberdeen, 1989), 179-184.

<sup>69</sup> The Sheriff of Midlothian throughout 1908 was Charles Cornelius Maconochie KC (1852-1930, called to the bar 1876). Before becoming sheriff in 1904, he had been a sheriff-substitute in Midlothian since 1896. His colleague, Sheriff-Substitute James Gardner Millar (1861-1928, called to the bar 1881), was appointed Sheriff of Lanarkshire in October 1908, and was replaced in Midlothian by Robert Low Orr KC (1854-1944, called to the bar 1881), who would remain in post until 1938. Also sitting in Edinburgh throughout 1908 was John Crawford Guy (1861-1928, called to the bar 1886), who had been appointed in 1904 and would continue to sit until 1921. He was also a founder member of the Old Edinburgh Club.

<sup>70</sup> *Scots Law Times*, 9 January 1909 (News), 3.



coming in is but a feeble dribble which holds out small hope of better things". His pessimism was borne out by another commentator in the *Scots Law Times* who, no doubt wishing for better things at the beginning of 1909, noted that the previous year in the Court of Session was "in no sense an eventful one ... the volume of work in the Outer House has not been large," while the Inner House had had time to dispose of all arrears of appellate business.<sup>71</sup> The lack of business may lie behind the adoption by the Faculty of Advocates of a committee report in November strongly reasserting the traditional position that agents should transmit fees along with instructions to counsel and recommending that instructions without fees be refused unless there was prior consultation between agents and counsel. One result was that the year ended with much hostility between the two branches of the profession, the solicitors temerously suggesting that the bar's monopoly of rights of audience in the superior courts be brought to an end.<sup>72</sup>

The main impression of Parliament House one gains from the 1908 legal journals is one less of the press of legal business than of significant building, renovation and modernisation work. New court-rooms, including the Oak Court (Court No 9), were being created at the southern end of the Box Corridor; a new heating system installed; defective ventilation and drainage remedied; and court rooms and corridors repainted. The resulting scenes and sounds were vividly described by the Edinburgh correspondent of the *Scottish Law Review*:

The enrolling and boxing-room is, along with the SSC Library, concealed behind a temporary partition of wood and canvas, which has been erected to allow the operations on the southern walls to proceed. To get to either place one must enter by a small door in the partition, on the other side of which one feels like being behind the scenes of a theatre. The cold draughts which play about the nether limbs help to heighten the fancy. The extension work proceeds apace, and the Court has now got used to the strange noises made by the workmen engaged, just as one can get used to riveting or loom-weaving if a little patience be exercised.<sup>73</sup>

The lobby or vestibule to the building's public entrance in Parliament Square was also reconstructed in December by the removal of a wooden screen from behind which hitherto refreshments had been sold to patrons who consumed their purchases standing on the spot.<sup>74</sup> A much more spacious "Luncheon and Refreshment Room", where customers could find a seat and tables as well as food and drink, was being

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<sup>71</sup> *Scots Law Times*, 9 January 1909 (News), 2.

<sup>72</sup> See generally *Scots Law Times*, vol 16 (1908) (News), 142-144, with response by a WS at 150; *Scottish Law Review* 25 (1909) 1-8, 15-23. At the heart of the issue was the "speculative action" long allowed in Scottish practice, in which solicitor and counsel agree to be paid only if the action is successful. The advocates' complaint was that the practice of not sending fees with instructions had the effect, if not objected to, of converting every action into a speculative one. Agents' main justification for their practice was that they were not placed in funds in advance by clients or, in cases from out of town, by correspondent firms.

<sup>73</sup> "Notes from Edinburgh", *Scottish Law Review* 24 (1908) 46.

<sup>74</sup> *Scots Law Times*, 26 December 1908 (News), 158.

built during 1908 below the enrolling room in what had been the SSC Library before 1892; it opened early in 1909, apparently to popular acclaim.<sup>75</sup>

The Advocates Library was also being remodelled, including the provision of a spacious reading room at its west end, stocked with non-legal literature and finely furnished for the use of the “strangers” permitted to read in the Library as well as of members of Faculty. “Much-needed” electric lighting was put in throughout.<sup>76</sup> The Laigh Parliament Hall was still part of the Advocates Library at this time, used *inter alia* for a standing exhibition of some of the most interesting of the Library’s historic contents,<sup>77</sup> but it was closed during most of 1908 as a result of the ongoing construction work, re-opening only in October. Another major project, the redecoration and electric lighting of the Signet Library, directed by Sir Rowand Anderson, was also completed in 1908,<sup>78</sup> while building operations were carried out in the SSC Library over the Christmas recess of 1907-08.<sup>79</sup>

Electric lighting had first been installed elsewhere in Parliament House a few years before, but the Edinburgh correspondent of the *Scottish Law Review* waxed critical in the April issue, saying that the provision could not be said “to be even reasonably satisfactory”,<sup>80</sup> and illustrating his point as follows:

On Wednesday, the 18th of the month, Edinburgh was until 1 p.m. a city of dreadful night, for a dense wet fog prevented daylight from penetrating into the city, and although the street lighting was entirely neglected by the civic authorities, every available light was turned on within Parliament House. The inadequate supply of lights called for the historic candlesticks with their candles enclosed in glass jars being distributed among the Courts, and even with their aid the lighting left much to be desired. In the back passage near the enrolling room, where the wires are disconnected owing to the building operations going on, one had to grope about blindly, and a serious accident might easily have happened to a person unused to walking in pitch darkness.<sup>81</sup>

In 1908 the courts in Parliament House were presided over by Lord Dunedin (Andrew Graham Murray), one of the big figures of Scottish legal history on most views (possibly including his own).<sup>82</sup> At the age of 59, he was in his prime: he had already served as Lord Advocate and Secretary of State for Scotland and would go on to be a Law Lord, retiring finally in 1932 but living on to the age of 93. As his judicial title would suggest, he was an Edinburgh man, the son of a partner in Tods

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<sup>75</sup> *Scots Law Times*, 23 January 1909 (News), 10. The resident caterers were Messrs M Mitchell & Co, of Gloucester Place. The cafeteria is still there, designated the Writz Café on my most recent visit during Edinburgh Doors Open Day, 27 September 2008.

<sup>76</sup> See for a more detailed account of the work, highlighting the contribution of W K Dickson to its planning, Brown, *Building for Books*, 226-232.

<sup>77</sup> These included the Scottish Covenants, the Scott MSS, letters of Mary Queen of Scots and Charles I, the Rosslyn Missal and the Papal Bull of 1329 authorising the coronation and anointing of kings of Scots, as well as early printed material including that of Chepman and Myllar (*Scots Law Times*, 28 January 1909 (News section), 12. .

<sup>78</sup> *Scots Law Times*, vol 16, 28 November 1908 (News section), 136-137.

<sup>79</sup> *Scottish Law Review* 24 (1908), 18.

<sup>80</sup> “Notes from Edinburgh”, *Scottish Law Review* 24 (1908), 95.

<sup>81</sup> *Ibid*, 95-96.

<sup>82</sup> *ODNB*, “Murray, Andrew Graham, first Viscount Dunedin”.

Murray & Jamieson WS,<sup>83</sup> but he lived at 7 Rothesay Place in Drumsheugh, slightly apart from most of his professional brethren. In my view one of Dunedin's strong points was his staunch support, rather against the current of the times, for the independence and distinctive approach of the Scottish legal tradition, and he can be found beating his legal nationalist drum in a speech at the annual dinner of the Scots Law Society held on 7 March 1908.<sup>84</sup> He headed a powerful First Division of the Court of Session, where his appellate colleagues included Lords McLaren and Kinnear, both long-serving and formidable judges.<sup>85</sup> But during the year Dunedin's highest visibility in the legal press came from his chairing a Royal Commission on Registration of Title, threatening (but in the end not achieving) changes to the system of land transfer: a prospect which, as usual, aroused hostility and anxiety in equal measure amongst the conveyancers over in the first New Town.<sup>86</sup> The Commission did not report until 1910, and even then its counsels were multiply divided;<sup>87</sup> so registration of title did not become a reality in Scotland until the Land Registration (Scotland) Act 1979, and only in recent years has the system become completely established, if still not free from (merited) criticism.

Another big judicial figure, at least in a physical sense, was the Lord Justice-Clerk, Sir John Hay Athole Macdonald, Lord Kingsburgh, nicknamed 'Jumbo'. He had held his position at the head of the Second Division of the Court of Session since 1888 and would not retire until 1915; in 1908 he turned 72. Like Dunedin, he was an Edinburgh man, the son of a WS, and he lived at 15 Abercromby Place.<sup>88</sup> Macdonald is best known today for his contribution to criminal law and his memoirs, published on his retirement under the title *Life Jottings of an Old Edinburgh Citizen*. But he turned up unexpectedly in the news in September 2008 when the car number-plate which he purchased in 1903 – S 1, the very first number-plate issued in Edinburgh – was put up for sale by his descendants and went for nearly £400,000.<sup>89</sup> The *Oxford Dictionary of National Biography* notes that "in the development of motor transport [Macdonald] was an enthusiastic pioneer, and ... president of the Scottish Automobile Association."<sup>90</sup> We can safely presume, therefore, that it was not Macdonald who penned a review of the newly published sixth edition of George Henry Hewlett Oliphant's *The Law of Horses*, describing the book as "a handy, practical guide to all practitioners having occasion to deal with cases relating to that noble animal, which is not likely to become extinct notwithstanding many prophecies to the contrary, for many generations yet to come."<sup>91</sup> This conference should also know, however, that Macdonald was, "as president of the Cockburn Association, a jealous guardian of the

<sup>83</sup> His father was Thomas Graham Murray of Stenton, LLD, WS (1816-1891, admitted WS 1838).

<sup>84</sup> *Scots Law Times*, vol 15, 14 March 1908 (News section), 171-172.

<sup>85</sup> See the relevant entries in the *ODNB* for a little more detail.

<sup>86</sup> See e.g. J S Sturrock, "Registration of title and Scottish conveyancing", *Juridical Review* 20 (1908-09) 1-15; Anon, "The Society of Solicitors in the Supreme Court and the registration of title", *Scots Law Times*, vol 15, 7 March 1908 (News section), 166-167.

<sup>87</sup> See the four Reports of the Royal Commission on Registration of Title in Scotland (1910).

<sup>88</sup> His father was Mathew Norman Macdonald Hume WS (1793-1878, admitted WS 1815). Lord Justice-Clerk Macdonald was a child of his father's second marriage. Mathew's third marriage (in 1843) was to Agnes Hume of Ninewells (Berwickshire), second daughter of David Hume, Baron of Exchequer and Professor of Scots Law at Edinburgh University 1786-1822; the match led him to add Hume to his surname.

<sup>89</sup> See BBC News Online, 5 and 19 September 2008.

<sup>90</sup> *ODNB*, "Macdonald, Sir John Hay Athole". For Macdonald's own comments on his motoring enthusiasms, see *Life Jottings of an Old Edinburgh Citizen*, 491-498.

<sup>91</sup> *Scottish Law Review* 24 (1908) 292.

beauties of the city of Edinburgh”,<sup>92</sup> and he wrote much about the subject in his *Life Jottings*. But it will be his interest in motor cars to which we return later in this paper.

At the start of the autumn term in October 1908 Lord Stormonth Darling retired from the Court of Session bench and was replaced by William Campbell KC, Dean of the Faculty of Advocates. At his installation on 15 October Campbell took the judicial title Lord Skerrington, from his Ayrshire estate near Cumnock. The *Scottish Law Review* noted that Campbell was a Roman Catholic and “the first of that persuasion [since the Reformation]” to be either Dean or a Court of Session judge.<sup>93</sup> That this was not without public controversy at the time becomes clear from a further comment in the *Review*’s next issue:

Rumours were rife before the meeting of the Court [for the installation] that the creation of a disturbance was contemplated by the Reverend Pastor Jacob Primmer, a person of some notoriety in Dunfermline and elsewhere, and adequate police arrangements had been made to prevent such an unseemly act being perpetrated, but, happily, the reverend pastor’s disturbance, if contemplated at all, did not come off. The fact that Lord Skerrington is of the Roman Catholic faith, it appears, does not meet with the approval of the colleague of Pastor Thompson Diver, of Glasgow, but it seems unlikely that his lordship or anybody else outside of Dunfermline is going to worry over the fact.<sup>94</sup>

No doubt, however, a less tense atmosphere prevailed a month later at Lord Skerrington’s home in Randolph Crescent when his Ayrshire tenants presented him with “an handsome illuminated address” to mark his promotion and their appreciation of him as a sympathetic and generous landlord.<sup>95</sup> It may also have been in celebration of his appointment that he presented the Advocates Library with “two large new mahogany showcases” for the public exhibition in Laigh Parliament Hall.<sup>96</sup>

Despite the general shortage of business in Parliament House, some interesting cases came before the courts in 1908. For much of the first half of the year the Edinburgh correspondent of the *Scottish Law Review* was agog at the prospective appearance of the Vatersay raiders in court to answer for their breach of the interdict obtained the previous year by the island’s owner Lady Cathcart to compel them to give up their attempted settlement on her property. Initially his concern was about “how the poverty-stricken squatters are going to raise the money to come to the

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<sup>92</sup> *ODNB*, as above.

<sup>93</sup> “Notes from Edinburgh”, *Scottish Law Review* 24 (1908), 243. This was not strictly accurate, as pointed out in a subsequent issue by James Grant, solicitor, county clerk and treasurer of Banffshire and town clerk of Banff, drawing attention to the appointment of Alexander Gordon of Auchintoul (Banffshire) as an ordinary Lord of Session by King James VII in 1688, followed by his removal the following year by King William III and his government (*ibid*, 275). The regnal numbers here are Grant’s, for whose public appointments, all made in 1908, see *ibid*, 108, 124.

<sup>94</sup> *Scottish Law Review* 24 (1908), 263. For Primmer see *ODNB* and S Bruce, T Glendinning, I Paterson and M Rosie, *Sectarianism in Scotland* (Edinburgh, 2004), 18-20. For the Reverend G Thompson Diver see *Boal v Scottish Catholic Printing Co Ltd* 1907 SC 1120, with further context (but no reference to Diver) in Tom Gallagher, *Glasgow: The Uneasy Peace: Religious Tension in Modern Scotland* (Manchester, 1987), especially chapter 2.

<sup>95</sup> *Scots Law Times*, vol 16 (News), 118.

<sup>96</sup> *Scots Law Times*, 23 January 1909 (News section) 12.

capital”;<sup>97</sup> then once they had arrived, their travel expenses met by Lady Cathcart, about the maintenance of the men’s families during the two months’ imprisonment in Calton Gaol ordered for them by the court, and their return fares.<sup>98</sup> “One is at a loss to know how these squatters ought really to be regarded,” the Edinburgh correspondent had worried in April;<sup>99</sup> and there is a slightly comical air of surprise in his reaction when the islanders finally came before the court in June: they were “a respectable, well-set-up, and well-clad lot of men ... resembling in appearance the nautical men who from time to time turn up in Court as witnesses in maritime causes ... [and] intelligent-looking.”<sup>100</sup> He finally referred to them as the “Vatersay raiders” (rather than “squatters”) in reporting the “rather sensational” denouement of the case in July,<sup>101</sup> when the men were released early after Lady Cathcart’s counsel successfully moved the Second Division to grant an order for their liberation. “Lady Cathcart,” he wrote, “has come out of the whole business with greater credit than any party connected with the Vatersay land troubles, her generosity even going the length of providing the travelling fares to take her former adversaries home.”<sup>102</sup>

The Standard-Bearer case, which was argued before the First Division on 25 February and the following days, and in which opinions were advised on 18 July, was of an altogether different character from that of the Vatersay men. The case had been running since April 1902 when the Earl of Lauderdale had claimed to be entitled to the office of Hereditary Standard Bearer of Scotland and to perform services in that capacity at the then forthcoming coronation of King Edward VII (which eventually took place on 9 August 1902). Lauderdale’s claim was initially rejected by a commission appointed by the King, and the duties were performed at the coronation by Henry Scrymgeour-Wedderburn, who was the defender in the action. In an opinion with which his brethren agreed, Lord President Dunedin held that the Court of Session had jurisdiction to determine the matter despite the previous findings of the King’s commission, the function of which was only to determine who was to serve at the particular coronation, and not the right to the office.<sup>103</sup> The decision was however appealed to the House of Lords, which reversed it on other grounds in 1910.<sup>104</sup> The dispute between the Lauderdalees and the Scrymgeour-Wedderburns would however rumble on until 1952 (i.e. just before the present Queen’s coronation), when the Lord Lyon decided that the latter, now Earls of Dundee, had the right to carry the Royal Standard (the Lion Rampant), while the Lauderdalees were entitled to carry the National Flag (the Saltire).<sup>105</sup> A good compromise ... perhaps.

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<sup>97</sup> *Scottish Law Review* 24 (1908), 49-50.

<sup>98</sup> *Ibid*, 156.

<sup>99</sup> *Ibid*, 95.

<sup>100</sup> *Ibid*, 155-156.

<sup>101</sup> Both quotations at *ibid*, 179.

<sup>102</sup> *Ibid*, 180. See further on the whole incident and its social and political setting Ben Buxton, *The Vatersay Raiders* (Edinburgh, 2008). For more on the overall context see James Hunter, *The Making of the Crofting Community* new edition (Edinburgh, 2000), especially chapter 11, and Ewen Cameron, *Land for the People? The British Government and the Scottish Highlands, c.1880-1925* (Edinburgh, 1996), especially at 107-123.

<sup>103</sup> See *Earl of Lauderdale v Wedderburn* 1908 SC 1237; (1908) 16 SLT 354.

<sup>104</sup> 1910 SC (HL) 35.

<sup>105</sup> Lyon’s judgement was issued on 26 November 1952 but not reported until 1985: *Earl of Lauderdale, Petitioner* 1985 SLT (Lyon Ct) 13.

Partly because trams are now certain to return to the streets of Edinburgh, it is worth noting their presence in the law reports of 1908. One of the two tramways cases to be discussed here is indeed still a leading precedent today on its subject-matter of unjustified enrichment. But *Edinburgh and District Tramways Company Limited v Courtenay*,<sup>106</sup> decided by the First Division on 29 October, is really about the so-called ‘decency’ boards hung along the railings of trams’ upper decks to protect the modesty of female passengers from the curiosity of pedestrians below,<sup>107</sup> and the liability of advertisers using these boards to contribute to the cost of fitting them onto the trams. It seems that where prior practice with horse-drawn cars had been to have such boards only when advertisers actually supplied them, the more recent cable-powered cars had the decency boards already installed, thus saving advertisers expenditure on boards and their fittings. In rejecting the claim of the tram company against the advertising firm for a contribution based upon this saving, Lord President Dunedin sketched a hypothetical surely derived from experience of Edinburgh tenemental living: “One man heats his house, and his neighbour gets a great deal of benefit. It is absurd to suppose that the person who has heated his house can go to his neighbour and say, “Give me so much for my coal bill, because you have been warmed by what I have done, and I did not intend to give you a present of it.”<sup>108</sup> The reports of the case also contain fascinating detail about the advertising to be carried on the car windows, which were to be on coloured glass or gelatine transparencies and enclosed by beading, with it being possible to have two such advertisements per window pane. It is perhaps significant that the tramway company solicitors in this case were the prestigious Davidson & Syme WS of Charlotte Square.

The second of the tramways case illustrates both the inherent dangers of heavy motorised transport moving more rapidly (nine miles per hour) than its horse-drawn equivalents and also with frequency (every three minutes on the tram-route in question); and, perhaps, the slowness with which the citizens of Edinburgh were adapting their behaviour to guard against the resultant hazards, especially for their children. *Cass v Edinburgh and District Tramways Company Limited*<sup>109</sup> arose from an accident when a boy aged four years and eight months was run over by a north-bound cable-car tram on Inverleith Row late on a Saturday afternoon in mid-November 1907. The boy survived but lost both his legs below the knee. His father brought a damages claim against the company on his son’s behalf, their solicitor being Francis S Cowrie SSC, a sole practitioner at 54 Frederick Street; the tram company this time used Macpherson and Mackay SSC, a leading court firm based in Leith. The pursuer’s argument was that although the seventeen-year-old tram in question had not been driven at excessive speed, its continued use in service at all was negligent in that the design of its spiralling stairs fore as well as aft on the left-hand side meant that the view of the road ahead for the driver, who stood a little to the right at the front of the vehicle, was significantly restricted. The stairs of more recent trams were differently

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<sup>106</sup> (1908) 16 SLT 548; 1909 SC 99.

<sup>107</sup> They were also known as ‘weather’ boards, while Lord President Dunedin says in his opinion that they “also no doubt served purposes of safety, because it would prevent a child slipping through the somewhat wide bars and would also prevent persons putting out their foot *per incuriam* and getting it caught by passing tramway cars” (at (1908) 16 SLT 548, 550; 1909 SC 99, 104).

<sup>108</sup> (1908) 16 SLT 548, 551; 1909 SC 99, 105.

<sup>109</sup> The progress of the case can be followed through these law reports: (1908) 15 SLT 957; (1908) 16 SLT 39; (1908) 16 SLT 362; 1909, 1 SLT 513; 1909 SC 1068.

configured and gave the driver a better leftward view; and so the accident could have been avoided by using these safer trams only.

This argument was ultimately rejected both at first instance and on appeal to the Second Division. The background was that the pursuer's family lived in Eildon Street; the boy had been allowed to go on his own to spend pocket-money at a shop (Mrs Barr's) on the east side of Inverleith Row, but contrary to his parents' instructions he had crossed the road and gone further to another shop (William Lumsden's) at 1 Inverleith Terrace; finally, having bought a bag of nuts, the boy began to return home and started to cross Inverleith Row in a slanting direction but without looking for traffic, being "absorbed", as the court put it, in his purchase and not hearing the approaching tram (possibly also because, as the boy's counsel argued, a strong north wind was blowing and the greasiness of the rails muffled the noise of the wheels). The action failed on two grounds: the company was not negligent in operating the tramcar, with which there had been no previous accident; and the boy's contributory negligence, which as the law then stood was a complete defence for the company. The evidence of the driver, that his view was not significantly impeded in any way by the stair on his left, was accepted: the judge who heard the evidence, Lord Guthrie, found him "a man likely not only to be careful, but hyper-conscientious in the discharge of his duty". The parents had warned the "distinctly intelligent" child of the dangers and to watch that no tram was coming before crossing the road. No-one was to blame for the accident except its unfortunate victim, for whom the law of delict could therefore provide no remedy.

There is, however, an interesting passage in the opinion of the car-loving Lord Justice-Clerk Macdonald:

The driver of a car cannot be always keeping a look-out to a particular side of his car. He may have to look straight ahead if anyone is crossing, or he may have to look to the other side if any high vehicle coming in the opposite direction obscures his view of the road on that side, so that there may be danger if anyone should step out from behind it.<sup>110</sup>

The passage may reflect something of the arguments heard in the court. The pursuers had claimed that the driver had rung his bell in acknowledgement of another tram passing on the south-bound track just before the accident, but this is not mentioned in the judges' opinions. While this evidence might have suggested that the boy should have heard the tram approaching, it could also be seen as an indicator that the driver's attention was not fully on the road immediately ahead of him when the boy stepped in front of the car. Perhaps the Lord Justice-Clerk's remarks were addressing this possibility. But the pursuer's case was not based on any negligence of the driver, and so the point was not otherwise explored by the courts.

### **Old College and the Faculty of Law**

To complete our picture of lawyers' Edinburgh in 1908, we must now again move in a southerly direction, to Old College on South Bridge and the Faculty of Law in the

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<sup>110</sup> 1909 1 SLT 513, 518; 1909 SC 1068, 1079.

University of Edinburgh.<sup>111</sup> Most entrants to the legal profession in Edinburgh attended classes there as part of their apprenticeships: for prospective Writers to the Signet and SSCs it was compulsory. The classes took place between 9 and 10 in the morning and again between 4 and 6 in the afternoon, with the result that, as already noted, another feature of Edinburgh traffic between the New and the Old Towns was the twice-daily passage of the apprentices between the university and the offices where they worked in the middle of the day. We have also already noted the presence among them in 1908 of the first two women students of law: another notable was Allan Ebenezer Ker who, after becoming a WS in December, later won the Victoria Cross “for most conspicuous bravery and devotion to duty” as a lieutenant in the Gordon Highlanders in action near St Quentin on the Western Front on 21 March 1918. Still later he became the model for Lieutenant-Colonel Lysander Finn VC in Anthony Powell’s *A Dance to the Music of Time*.<sup>112</sup>

Teaching was by lectures, and there was little assistance available from student texts: the book prescribed for Scots Law, for example, was Erskine’s *Principles of the Law of Scotland*, first published in 1754, although the edition in use in 1908 (the twentieth) had been published as recently as 1903.<sup>113</sup> There was also no specialised law library in the University, so much for the students depended on the delivery of the lectures. The praises of the law professors were later sung by one of their students, John Lillie, even if he thought that “real understanding ... can only come from practice and study of the application of legal principles” (he was an apprentice at Baillie Gifford WS at 12 Hill Street while listening to his law lectures).<sup>114</sup> The professoriate certainly included some famous names: the Chair of Scots Law was held by the later-knighted John Rankine, whose works on landownership and leases are still referred to. Many of the professors were members of the Faculty of Advocates; indeed the Faculty effectively appointed the Professors of Scots Law and Civil Law from their own number, and Law Faculty meetings took place in the Advocates Library, not Old College. Several law professors also lived in the same New Town streets as their professional brethren.<sup>115</sup> The Professor of Conveyancing was likewise appointed by the Writers to the Signet: in 1908 the chair

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<sup>111</sup> On Old College see Andrew G Fraser, *The Building of Old College* (Edinburgh, 1989), especially at 292-311. For the Faculty of Law around this period, see Turner (ed), *History of the University of Edinburgh*, 83-99 (contributed by James Mackintosh, Professor of Civil Law 1894-1938).

<sup>112</sup> Information from my university colleague Dr Jeremy Crang (History, Classics and Archaeology), to whom I am most grateful. For Ker (1883-1958) being admitted WS (and other biographical details), see *WS Register*, 168. The University records suggest that he did not take the degree of either LLB or BL, so presumably he took and passed the WS exams instead. His apprenticeship was served with his father Robert Darling Ker (also a WS and notary public), whose practice was located at 5 George Street in 1908. For Ker as Finn see Anthony Powell, *To Keep the Ball Rolling: Faces in My Time* (London, 1980), 134.

<sup>113</sup> Edited by the Professor of Scots Law, John Rankine, who would produce a twenty-first (and last) edition of Erskine’s *Principles* in 1911. The work was finally superseded in the 1920s by the Glasgow/Edinburgh collaboration of Professors W M Gloag and R C Henderson that produced *Introduction to the Law of Scotland* (now in its 12th edition, published 2007).

<sup>114</sup> Lillie, *Tradition and Environment*, 36. For his comments on those who lectured him, see *ibid*, 39-41. They may be compared with those of Professor A H Campbell, who experienced many of the same lecturers 13 years later: A H Campbell, “Memories of the Faculty of Law, 1921-1971”, *University of Edinburgh Journal* 28 (1977) 60-64.

<sup>115</sup> E.g. Rankine (called to the bar in 1869, lived at 23 Ainslie Place), Sir Ludovic Grant (International Law; called 1887, living in 4 Belgrave Crescent); and James Mackintosh (Civil Law; called 1886, living in 2 Drummond Place).



was held by John Mounsey (“that fine expositor”, as Lillie thought<sup>116</sup>), who was of course himself a Writer to the Signet and a partner in John C Brodie and Sons.

Most if not all of the professors practised as well as teaching law: for example, James Mackintosh, who held the Civil Law Chair in 1908 and would do so for 30 more years, would become KC in 1909 and Sheriff of Ross in 1912. There were also lecturers below the rank of professor, paid an annual salary of £150 in 1908; they too were part-time teachers from the ranks of the practising profession. The legal press did not report any discord among them when Henry Aitken KC was appointed to a new lectureship in Mercantile Law in October at a salary of £400, this presumably reflecting a difficulty in attracting specialists in a developing, complex but remunerative field.<sup>117</sup> It is possibly significant that Aitken had begun his career as a law agent in commercial Glasgow before call to the bar in 1889. His superior status as a KC may have been why his inaugural lecture to his class, entitled “The Present Position of Mercantile Law in Scotland” and given presumably the previous October, was published in two parts in the *Scots Law Times* in January 1909.<sup>118</sup> Perhaps Aitken inspired the student Lillie, who would become his assistant in 1921 and his successor in 1928.<sup>119</sup> In 1909 the Law Faculty also succeeded in attracting Allan McNeil, the well-known commercial practitioner, to give lectures in Banking Law; and this too bore fruit for Lillie, who in the 1920s would become co-author with McNeil of a long-lasting textbook on mercantile law.<sup>120</sup> Like Aitken, McNeil had a Glasgow law practice background, having begun his career with Maclay Murray & Spens and McGrigor Donald & Co before moving to Edinburgh to become (as previously noted) head of the Bank of Scotland law department.<sup>121</sup>

There was a whiff of academic scandal in 1908, although fortunately not directly affecting the Edinburgh Law Faculty of the day. Henry Goudy, Regius Professor of Civil Law at Oxford but a former holder of the Edinburgh Chair of Civil Law and of course an advocate, published in the *Juridical Review*, the main Scottish academic law journal, an article accusing Hannis Taylor, author of *The Science of Jurisprudence* published in New York earlier in the year, of plagiarising Professor Muirhead’s *Historical Introduction to the Law of Rome*.<sup>122</sup> James Muirhead had been Goudy’s predecessor in the Edinburgh Chair from 1862 to 1889, and Goudy had edited a second edition of his *Historical Introduction* for publication in 1899. He concluded his detailed denunciation of Taylor’s work with an invocation of his mentor:

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<sup>116</sup> Lillie, *Tradition and Environment*, 41.

<sup>117</sup> *Scots Law Times*, vol 15 (1908) 169; vol 16 (1908), 82. University records suggest however that the creation of the post was a bone of contention amongst the professoriate.

<sup>118</sup> The lecture argued for a Continental-style code of commercial law for the whole UK, with adequate account being taken of Scots law in its formation, since many Scots rules were better than their English equivalents (examples are given). See *Scots Law Times*, 9 and 23 January 1909 (News section), 5-8, 12-14.

<sup>119</sup> As noted in *Scots Law Times* (1941) (News section), 55, when reporting Lillie’s elevation to be Sheriff of Fife and Kinross; see also his *Tradition and Environment*, 124-126, although he does not mention Aitken.

<sup>120</sup> See McNeil’s obituary (*Scots Law Times*, 7 May 1938 (News section), 97; Lillie, *Tradition and Environment*, 107-109. McNeil and Lillie on *The Mercantile Law of Scotland* ran to six editions between 1923 and 1965, and was still in use when I was a law student.

<sup>121</sup> *Scots Law Times*, 7 May 1938 (News section) 97.

<sup>122</sup> “Plagiarism – a fine art” *Juridical Review* 20 (1908-1909) 302-315. Professor John Cairns tells me that the article led to much correspondence in *The Scotsman*.

Had the matter concerned myself alone I should probably have kept silence ... but the duty which I owe to my deceased master and friend compels me to write. Professor Muirhead ... probably did more than anyone last century to raise the standard of legal scholarship in this country. For this, indeed, he received no great recognition in his lifetime, by honorary degrees or otherwise – he no way belonged to the class of superficial self-advertising writers upon whom honours are apt to be showered – but his writings were his own, and one must see that they are not wrongfully appropriated by others after his death.<sup>123</sup>

### **To the world of 2008: (a) full-time education and academics, with feminisation**

The system of legal education in Scotland, with its part-time professors and lecturers taking part-time students through a rather incoherent and unbalanced curriculum, was much criticised, even at the time;<sup>124</sup> but it changed remarkably little in the next half-century and more.<sup>125</sup> Only in 1960 did the LLB become a full-time, first degree, capable of being taken on to Honours level over a four-year period, with one concomitant being the establishment of a substantial Law Library in Old College.<sup>126</sup> The full-time academic lawyer working almost entirely in the university had emerged well before then; but it has since ceased even to be necessary to have a professional qualification, never mind practice law.<sup>127</sup> The Faculty of Advocates long ago lost interest in their patronage in relation to the Chairs of Scots and Civil Law, while the Chair of Conveyancing is effectively defunct and with it the role of the Writers to the Signet in appointments to it. Law students are by no means necessarily committed to a professional career, and use their degrees for a wide variety of purposes, not least to go on to the postgraduate academic study of law; something almost (but not quite) unheard of in 1908.<sup>128</sup> The undergraduate law degree, in other words, has become a liberal-academic rather than a profession-specific qualification, and the only contacts the student has with the world of practice are through part-time tutors (usually current trainees or assistants), vacation employment or family connection. Moreover, Edinburgh is no longer the only law school in town, Napier University having become eligible to award professionally qualifying LLB degrees in 2002.

The nearest approach to the world of 1908 to be found now is in the postgraduate Diploma in Legal Practice, introduced in 1980 as a prerequisite of entry into professional training, and taught in the university but almost entirely by practitioners coming in from their offices in town. Much of the teaching for both

<sup>123</sup> Ibid, 315. The barb in the reference to honorary degrees lay in the American Taylor's possession of two honorary degrees from British universities.

<sup>124</sup> See e.g. T M Cooper, "Legal education in Scotland: a criticism", *Scottish Law Review* 38 (1922) 71, reprinted in his *Selected Papers 1922-1954* (1957). Cooper, later Lord President, was an LLB student at Edinburgh 1911-1913.

<sup>125</sup> See Brownlie, *Treasured Years*, 143-149, for an account of the system in Edinburgh in 1948-1950, and David Edward, "Scottish legal education and the legal profession", in Hector L MacQueen (ed), *Scots Law into the 21st Century: Essays in Honour of W A Wilson* (Edinburgh, 1996), 50-64, for a picture of the position just before 1960.

<sup>126</sup> For the beginnings of the University Law Library see Campbell, "Memories", 63.

<sup>127</sup> See Kenneth G C Reid, "The third branch of the profession: the rise of the academic lawyer in Scotland", in MacQueen (ed), *Scots Law into the 21st Century*, 39-49.

<sup>128</sup> Edinburgh itself offers LLM and PhD degrees, in which the great majority of the students come from outside the UK, with English only as a second language; another significant difference in the environment compared with 1908, when the students were almost entirely from Scotland.

degree and Diploma in the Edinburgh Law School still takes place within Old College, but the students of 1908 would probably recognise only the great quadrangle (especially now that it is largely free of parked cars) and the location and shape of the lecture theatres. Even these are not used so much for law lectures, because they do not have enough seats for the larger classes; today's first year LLB may be more familiar with the big lecture halls of the Appleton and David Hume Towers in the George Square and Crichton Street areas of the university. The use of information technology both within the lecture theatre and without is another dimension of contemporary experience far removed from that of 100 years before.

The law students of 1908 would however probably be most surprised by the feminisation in the law classes of 2008; the majority of modern law students, by a considerable margin, is female.<sup>129</sup> This is also apparent in the figures about entrants to the profession. In September 2008 the number of women beginning the Faculty of Advocates' training course was for the first time greater than the number of men, while the most recent available annual statistics for admission as a solicitor in Scotland, those for 2007, show 353 women being admitted as against 199 men.<sup>130</sup> All this reflects, of course, the ultimate success of the pressures that were being exerted by the women's suffrage movement in 1908, although a world war was needed before the decisive formal steps were taken. The Sex Disqualification (Removal) Act 1919 provided that "a person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post ... or from entering on any civil profession or vocation". Madge Anderson, Glasgow University's first woman law graduate in 1919, became also the first woman to be admitted as a Scottish law agent in 1920,<sup>131</sup> while in 1923 Margaret Kidd, an Edinburgh LLB (1922) and daughter of a Linlithgow solicitor and Unionist MP, was the first female to pass advocate. Kidd would go on to be the first woman silk (1948) and the first woman judge – as a sheriff principal (1960) – in Scotland, as well as a Dame of the British Empire (1975). All this came despite marriage in 1930 (to a WS) and the upbringing of a daughter; the extent to which this cut across contemporary understandings is implicit in the comment of a 1948 pen portrait that "the door that lets in Miss Kidd, advocate, admits at the same time and in the same person Mrs Macdonald on whose housewifely care and skill husband and daughter alike depend."<sup>132</sup>

It may all have come just too late, however, for the pioneer women law students of 1908. Josephine Gordon Stuart had in 1915 married a solicitor, James Douglas Cameron, one of her LLB class-mates.<sup>133</sup> Their son, Joseph Gordon Stuart Cameron, became a partner in Stuart & Stuart, as did her younger brother William

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<sup>129</sup> The position has continued to develop since the observations made in Paterson, "Legal profession in Scotland", 87.

<sup>130</sup> *The Times*, 26 September 2008; Law Society of Scotland Annual Report and Accounts 2007, 8.

<sup>131</sup> See *Anderson Petitioner* 1921, 1 SLT 48 and Glasgow University website, <http://www.universitystory.gla.ac.uk/biography/?id=WH1693&type=P>. The first Aberdeen woman LLB was Elizabeth Barnett, who graduated in 1921 and qualified as a law agent and advocate in Aberdeen in 1924.

<sup>132</sup> *Scots Law Times* (1948, News section) 87, 88. The husband was Donald Somerled Macdonald WS, for whom see *WS Register*, 189.

<sup>133</sup> The best man was another LLB classmate, William Wilson (who became Professor of Public Law and the Law of Nature and Nations at Edinburgh in 1922): *Scots Law Times* (1982) (News section), 330.

Leitch Stuart, and she herself “occasionally help[ed] her father in his firm”.<sup>134</sup> But she never completed the professional qualification available after 1920, and as a wife and mother the option was probably never really open.<sup>135</sup> In contrast, her erstwhile companion Eveline MacLaren did not marry and became deeply involved in legal practice in her father’s firm, Duncan Smith & MacLaren SSC at 62 Frederick Street for long after his death in 1924. It seems clear, however, that Eveline was not formally admitted to the profession either. Her name is never listed amongst certificated Edinburgh practitioners by either the annual *Scottish Law Directory* or the *Edinburgh & Leith Post Office Directory*. Her death certificate in 1955, completed by her surviving sister Jessie, describes her as “solicitor”, but (unusually) the brief obituary notice in the *Scots Law Times* does not accord her that or any other professional designation, and merely highlights the fact of her having been one of the first women graduates in law.<sup>136</sup> The only certificated practitioner listed in Duncan Smith & MacLaren from 1925 on was Alexander Nisbet, who had been admitted as a law agent in 1921 and joined the firm around 1923.<sup>137</sup> But he disappears from all lists from about 1940, and thereafter, although the firm continued to occupy its office in 62 Frederick Street, no individual name is mentioned in it. Possibly Nisbet’s exit, for whatever reason, was a crisis from which the firm was rescued by its near neighbour, Balfour & Manson, which had moved into 58 Frederick Street in 1932. William Balfour and Peter Manson, the founding partners, were still in practice at the outbreak of World War II, and probably had known Eveline’s father long before his death. There is some recollection amongst former Balfour & Manson partners that Eveline linked Duncan Smith & MacLaren with them so that documents and other transactions needing the signature or participation of a qualified solicitor were lawfully executed. Certainly the connection between the two businesses was facilitated by knocking a passageway through a dividing wall between their respective offices.<sup>138</sup> Duncan Smith & MacLaren continued its independent but perhaps rather anomalous existence until as late as 1969, when it was finally absorbed in Balfour & Manson. Today the latter’s premises at 54-66 Frederick Street still embrace what were the offices of Duncan Smith & MacLaren as well as the 1908 home of Stuart & Stuart at No 56.

The feminisation of Edinburgh law since 1920 outside its classrooms has not been headlong.<sup>139</sup> No further females after Margaret Kidd were admitted to the

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<sup>134</sup> Nicoll, Stuart and Cameron, *A Stuart Story 1770-1980*, 45, 49. Josephine’s grandson Joseph Gordon Cameron WS is a partner in Stuart & Stuart today.

<sup>135</sup> Information from Gordon Cameron WS of Stuart & Stuart WS.

<sup>136</sup> *Scots Law Times*, 22 October 1955 (News section) 178. Eveline died in the Royal Infirmary on 18 September 1955, her final address being her father’s last home at Strowan Lodge, Albert Terrace. Josephine Gordon Stuart also died in 1955 (information from Gordon Cameron WS of Stuart & Stuart WS).

<sup>137</sup> Immediately before Duncan MacLaren’s death a third partner was his son Alasdair Iain MacLaren WS (1889-1933, admitted 1914); but he emigrated in 1924 to become President of the Court of First Instance in Baghdad, where he remained until 1929 (*WS Register*, 205). He did not re-engage with his former firm, perhaps because of the ill-health that may have led to his early death at the age of only 44.

<sup>138</sup> Information from Miss Ethel Houston and Messrs Ian and William Balfour (all retired partners of Balfour & Manson). The passage connected the two offices under the steep stairs leading up from the front door of No 60 to the flats above.

<sup>139</sup> See, for discussion of the position in 1988 and before, Paterson, “Legal profession in Scotland”, 93-94. Note also the 1930s comments of Professor Mackintosh in Turner (ed), *History of the University of Edinburgh*, 85 (“the public do not seem to welcome the female practitioner”) and idem,

Faculty of Advocates until 1948, and even as late as 1984 there had been only 31 in total.<sup>140</sup> It took the WS Society until 6 December 1976 to admit its first woman member, Miss Patricia Mair Stuart;<sup>141</sup> while the SSCs followed suit only on 3 July 1979, when Miss Joan Nicol Aitken gained admission to the Society.<sup>142</sup> The first female judge in the Court of Session, Hazel Aronson, was appointed in 1996;<sup>143</sup> the Law Society of Scotland elected its first (and so far only) woman President, Caroline Flanagan, in 2005.<sup>144</sup> The first female Lord Advocate, Elish Angiolini, was appointed to her post in 2006, having been previously the first woman (and non-advocate) to be Solicitor General for Scotland (appointed in 2001). The Edinburgh Law School appointed its first woman law professor – Anne Griffiths – in 2004. In 2008 female partners in solicitors’ firms are not unusual; but as suggested by the example of Morton Fraser quoted at the outset of this paper,<sup>145</sup> the ratio of women to men still tilts strongly in the latter’s favour, just as there are still only five female judges in the Court of Session,<sup>146</sup> five women amongst 17 permanent sheriffs in Edinburgh,<sup>147</sup> 15 female QCs out of 96 altogether at the Scots bar,<sup>148</sup> and three women law professors (out of 18 altogether) in the Edinburgh Law School.<sup>149</sup> The Faculty of Advocates has never had a female Dean, although Valerie Stacey QC was Vice-Dean from 2004 to 2007.<sup>150</sup> Women’s paths to the upper levels of the profession face the significant obstacle – if that is the right word – of child-bearing and family commitment, which weigh much more heavily upon them than their male counterparts.<sup>151</sup>

### **To the world of 2008: (b) change in the Old and New Towns**

Turning now to the courts, we enter a world which in many respects is little changed physically since 1908. Indeed, it is almost true to say that the last major changes in the Parliament House buildings took place in 1908, the principal exception being the 1992 addition of a significant number of new courts in the south-east parts of the complex overlooking the Cowgate. However, the location of the Sheriff Court

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“Reminiscences of an emeritus Professor of Law”, *University of Edinburgh Journal* 10 (1939-40) 177-185 at 178-179.

<sup>140</sup> See Adele L Paxton, “Getting even? A study of women at the Scottish Bar”, *Scots Law Times* (1984) (News section), 53 and 57 (2 parts), which is also interesting on contemporary attitudes amongst both male and female advocates.

<sup>141</sup> *WS Register*, xxv, 311. This Miss Stuart was so far as I know unrelated to the earlier graduate of 1909.

<sup>142</sup> Barclay, *SSC Story*, 221. Barclay notes that the issue had been under discussion in the Society for the previous 27 years. Rather a late start to a then remarkably prolonged debate, one feels.

<sup>143</sup> She took the judicial title Lady Cosgrove and retired in 2006.

<sup>144</sup> The Society’s first female (and non-solicitor) chief executive, Lorna Jack, took up office in January 2009.

<sup>145</sup> See above, 000 (six women amongst 34 partners).

<sup>146</sup> Ladies Paton, Smith, Dorrian, Clark of Calton and Stacey (for whom see further below). See the Scottish Courts website for a current list of the Court of Session and High Court of Justiciary judges (<http://www.scotcourts.gov.uk/session/judges.asp>).

<sup>147</sup> For a current list of sheriffs see the Scottish Courts website, <http://www.scotcourts.gov.uk/sheriff/sherifflist.asp>.

<sup>148</sup> *The Times*, 26 September 2008, also noting that 110 of the 462 practising members of the Faculty were women.

<sup>149</sup> Professors Jo Shaw (2004) and Charlotte Waelde (2008).

<sup>150</sup> Stacey ran for but failed to be elected as Dean when the office fell vacant in 2007. She was appointed to the bench in November 2008.

<sup>151</sup> Paterson, “Legal profession in Scotland”, 94, notes that the rise in the number of women entrants (typically from the middle classes) might decrease the opportunities for lower-class men (and presumably women too!) to enter the profession.

buildings has been changed no less than twice since 1908. The first of these changes came about as a result of the creation of a National Library of Scotland out of the Advocates Library, achieved thanks to a gift in 1923 from the Edinburgh biscuit manufacturer Alexander Grant. The necessary legislation was passed in 1925, but there was a protracted battle over a site for the new building needed to house a National Library as distinct from a basically professional one. Bryce's Sheriff Court on George IV Bridge was the favoured and eventually chosen spot, but the question then arose about where a new sheriff court might go. Government for long favoured what is now the Calton Hill site of St Andrew's House for this purpose, but eventually in 1935 a new building began instead to arise on the "island" site between Bank Street, St Giles Street and the Lawnmarket, a policy aimed at High Street regeneration having prevailed. The demolition of Bryce's building on George IV Bridge got underway in 1937, although thanks to the Second World War and difficulties afterwards for both the building industry and government finances the National Library building would not be completed for another 18 years.<sup>152</sup> The Edinburgh volume of *The Buildings of Scotland* describes the Lawnmarket Sheriff Court building as "grim neo-Georgian",<sup>153</sup> and certainly it is not the city's most attractive edifice; but it served its purpose until finally the increase in business, which had already led to the use of overflow premises in Victoria Street's India Buildings, became such as to demand another new building, eventually opened in 1995. Although the front entrance of that new building is in Chambers Street, in many ways it marks a return to the heart of lawyers' Old Town. Its rear façade towers over the Cowgate and presses close to the Solicitors Buildings of the SSC on the other side of the road; while Parliament House is no more than a strong arm's stone-throw away uphill to the north. Despite some pastiche external features, architecturally and logistically the present Sheriff Court building is a huge advance on its predecessor (which nonetheless continues to serve the legal system well as the Edinburgh home of the High Court of Justiciary).

The largest changes to lawyers' Edinburgh will begin to become apparent if we descend The Mound and leave the Old Town behind. First to be noted is the removal of the law publishers from St Giles Street and North Bank Street (although Greens, still in business as a subsidiary arm of the Thomson publishing empire, are now based in Alva Street at the West End). Once Princes Street and George Street have been crossed, and only once they have been crossed, do we begin to find what survives of the solicitors' enclave of a century ago. Although that is quite a lot, especially in Young and Hill Streets, it is a thing of patches rather than the dense concentration of 1908. As previously discussed, we will not find any of the firms that have lasted down to the present day in the same place. There are not many, if any, sole practitioners lurking in small offices up flights of stairs from the street. There is also a significant absence of the bigger firms; what is left in the New Town is mostly firms of medium size in Edinburgh terms (although that usually means significantly larger than even the biggest of their 1908 predecessors). Again, if we cross the further great divide that is Queen Street Gardens, we will still find advocates' brass plates fixed to the doors in Heriot Row, Moray Place, India Place and the rest; but many of these are relics of an era that, although well within living memory, has

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<sup>152</sup> See for accounts of events mainly concerned with the National Library perspective Cadell and Matheson (eds), *For the Encouragement of Learning*, 251-259, 270-279; Brown, *Building for Books*, 236-244; Macmillan, *Man of Law's Tale*, 229-252 (Sheriff Court mentioned at 249, 251).

<sup>153</sup> J Gifford, C McWilliam and D Walker, *Edinburgh* (The Buildings of Scotland, 1984), 188.

almost completely passed. Advocates still live in the New Town but they practice from the Advocates Library; and you are as likely to meet an advocate (or indeed a sheriff or a Court of Session judge) walking to work in the morning along South Bridge or Middle Meadow Walk as to do so coming up The Mound. Some even take the bus.

### **A flight from the New Town?**

It is not yet the case that the lawyers have fled the New Town as their late eighteenth- and early nineteenth-century predecessors abandoned the Old;<sup>154</sup> but a similar process could well be now underway, with a movement back across the valley of Princes Street Gardens heading, not for the High Street and points due south, but more south-south-westward. Lothian Road and Earl Grey Street form a key artery in this transition, which began with first Dundas & Wilson and then Shepherd & Wedderburn departing Charlotte Square in 1993 and setting up instead in Saltire Court on Castle Terrace. The moves were driven by a combination of factors which made the elegant houses of the New Town seem obsolete to some from a business perspective: growth and the pursuit of growth in business, especially that of commercial clients; the ever-increasing significance and demands of information technology; and the need to present an image of modernity better served by contemporary architecture (and shorter names) than by the traditional styles and habitat the foundations of which had essentially been laid down in the very different environment of the Victorian period.

The need has been felt by an increasing number of firms since the mid-1990s. The Burness offices are in the Clydesdale Bank Plaza on Lothian Road, while Anderson Strathern, the result of a 1992 merger between two firms already well over a century old in 1908, are in glass-sheathed offices at 1 Rutland Court, perhaps symbolically overlooking the Western Approach Road more than nearby Rutland Square. Close at hand, the Caledonian Exchange building in Canning Street houses Lindsays. A thoroughly modern footbridge over the Western Approach Road carries us to the recently completed Exchange Crescent, where Shepherd & Wedderburn moved in 2008, their outlook from No 1 being over Conference Square towards Morrison Street and the Edinburgh International Conference Centre. Beyond the Port Hamilton development on the far side of Morrison Street, in 2005 Tods Murray were attracted away from the splendours of 66 Queen Street, where the firm had been since far back in the nineteenth century, to take up residence on the top floors of 1 Edinburgh Quay. The new offices command a marvellous view in all directions, but have around their feet the Lochrin Basin of the Union Canal and the sites of the now mostly demolished Fountainbridge breweries. At Princes Exchange in Tollcross sits Turcan Connell, a firm born in 1997 from a marriage between what had been the private client departments of Dundas & Wilson and Burness as the former joined the Arthur Andersen international business network. Morton Fraser's impending move from Queen Street to the Quartermile development at the former Edinburgh Royal Infirmary site will extend the transition still further, although already established at Quartermile 1, since late in 2007, are the Edinburgh offices of the originally Glasgow firm of Maclay Murray & Spens.

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<sup>154</sup> For example, two major commercial firms still have their Edinburgh seats in Charlotte Square: Dickson Minto (founded in 1985 as a breakaway from Dundas & Wilson) and Davidson Chalmers. MBM Commercial, a buy-out of the commercial business of Murray Beith Murray in 2005, continues to operate from 7 (South) Castle Street.

The distances involved in these transitions will seem small to those who do not know Edinburgh; but anyone aware of the shaping of the city's social and psychological characteristics by its nineteenth-century divisions, not only of Old from New Town, but also of the industrial west from the commercial city centre and the residential Southside, will recognise that they are as momentous as would be the big London firms moving their palatial headquarters from the City to, say, Wandsworth. The moves are accompanied by other changes. The pursuit of growth means that many of the largest firms have offices in Glasgow. Equally, many of the major long-standing Glasgow commercial firms – Maclay Murray & Spens, McGrigors, McClure Naismith and Macroberts – have Edinburgh offices (all now in the Tollcross or Quartermile area, incidentally<sup>155</sup>), and more recently they have been joined by firms from Aberdeen (Ledingham Chalmers) and Dundee (Thorntons). Ledingham Chalmers rather bucks the location trend by having its Edinburgh office at Crichton House in Crichton's Close at Holyrood, while Thorntons are near traditional territory at 16 Alva Street. Many of the bigger firms mentioned present themselves, not as Edinburgh (or Glasgow, Aberdeen or Dundee, as the case may be), not even as Scottish, but as UK law firms, especially where the business they seek to attract is commercial rather than the traditional staples of landed estates, investment trusts and conveyancing. This UK identity has in many cases entailed the development of presences in London and other centres outside Scotland as well.

But there is also dispersal and specialisation amongst law firms that are not amongst the big commercial players and remain rooted in serving clients living and working mainly in the Edinburgh area. Increasingly such firms go to where the prospective clients are in the city, rather than the other way round. Anyone walking through residential areas such as Newington, Marchmont, Bruntsfield, Morningside and Corstorphine will soon come across the property shops from which many solicitors conduct estate agency and conveyancing businesses. The model developed from one first begun in 1971 with the Edinburgh Solicitors Property Centre (ESPC) in George Street, the stroke of collective genius which enabled Edinburgh's solicitors to meet the challenge posed by the rise of specialist estate agency firms in the domestic housing market. Court and criminal legal aid firms often have shop-like premises too, some near the courts, others in parts of town where perhaps prospective clients are most likely to live. Elegance is not generally the distinguishing feature of these premises, although some of them involve the creative renovation of older buildings: for example, Blair Cadell (a 1908 firm) at The Bond House in Bonnington, or Mary R McQueen & Co in a former warehouse on New Mart Road by the Corn Exchange.

### **Conclusion: what next?**

In conclusion, the picture is one of change and adaptation across a spreading and much more diffuse lawyers' Edinburgh, reflecting the various ways in which the profession has chosen to meet ever-shifting socio-economic conditions, and take opportunities as they have presented themselves. The success of several firms in meeting these challenges since 1908 should already be apparent; and it is striking how many of them had been enjoying such success for long decades before 1908 as well. It is not only the Faculty of Advocates and the Court of Session that are to be counted amongst Edinburgh institutions when we think of law. There are also here (and in

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<sup>155</sup> Respectively at Quartermile 1, Princes Exchange, Ponton Street and Excel House, 30 Sempole Street.



Leith, Glasgow, Aberdeen and Dundee, for that matter) case-studies of long-term sustainable achievement and change management by small businesses, built round the meeting of customer demands and needs as well as a powerful professional ethic that is generally honoured most in its observance despite popular prejudice to the contrary. The changes have been characterised by what used to be some of the Prime Minister's favourite virtues – prudence and discretion, especially in financial matters – even if that sometimes led to slowness of response and even obstinate conservatism on issues such as the availability of legal services to all regardless of wealth and the admission of women to careers in the profession.

One may finally note that these businesses are currently facing further challenges likely to test many to the limit, if not destruction. The present global financial crisis threatens both the commercial firms, with their close connection to financial services and business activity, and the estate agency ones, confronted by the steep decline in the housing market; while criminal defence firms are squeezed by the government's restrictions on legal aid funding. In consequence qualified practitioners have been made redundant and partners challenged to justify their status. Legislation is also in prospect under which many services hitherto the preserve of lawyers can be offered by other professions or through completely non-traditional outlets such as supermarkets. Talk of "alternative business structures" or "ABS" is everywhere, and a new regulatory body having powers in relation to both solicitors and advocates, the inelegantly named Scottish Legal Complaints Commission, opened its doors at 10-14 Waterloo Place on 1 October 2008. Yet I would not mind betting a modest sum that at least one or two of the firms and institutional names frequently mentioned in this paper will still be there when a parallel one is written to mark the bicentenary of the Old Edinburgh Club. Edinburgh's lawyers and legal institutions flourished in the move from mercantilism to capitalism, and they have survived such past crises of capitalism as the Great Depression and two world wars. A more specific recent example is Dundas & Wilson successfully disentangling itself from the Arthur Andersen international business network in 2002 after the disgrace and dissolution of its parent in the aftermath of the Enron scandal. That kind of resilience and adaptability will doubtless go on being needed by Edinburgh lawyers throughout the uncertain future, but the history of the last hundred years and more suggests that it will probably be forthcoming in abundance.

## APPENDIX

<b>FIRM NAME</b>	<b>1908 ADDRESS</b>	<b>2008 ADDRESS &amp; NAME</b>
Baillie & Gifford WS	12 Hill Street	<i>Biggart Baillie</i> 7 Castle Street
Balfour & Manson SSC	77 Hanover Street	54-66 Frederick Street
R C Bell and J Scott WS	13 Hill Street	<i>Bell Scott</i> 14-16 Hill Street
Blair & Cadell WS	19 Ainslie Place	The Bond House, 5 Breadalbane Street
John C Brodie and Sons	5 Thistle Street	<i>Brodies</i> 15 Atholl Crescent
W & J Burness WS	12 Hope Street	<i>Burness</i> Clydesdale Bank Plaza, 50 Lothian Road
Cornillon Craig & Thomas SSC	15 South Charlotte Street	<i>Cornillon Craig &amp; Co</i> 28 Drumsheugh Gardens
Drummond & Reid WS	21 Charlotte Square	<i>Drummond Miller</i> 31-32 Moray Place
Dundas & Wilson WS	16 St Andrew Square	Saltire Court, 20 Castle Terrace
Fyfe Ireland & Co SSC	71 Hanover Street	32 Charlotte Square
Guild & Guild WS	5 Rutland Square	51 North Castle Street
Lindsay Howe & Co	32 Charlotte Square	<i>Lindsays</i> Caledonian Exchange 19A Canning Street
Alex Morison & Co WS	33 Queen Street	<i>Morisons</i> 68 Queen Street
Morton Smart Macdonald & Prosser WS	19 York Place	<i>Morton Fraser</i> 30-31 Queen Street
Murray Beith & Murray WS	43 Castle Street	<i>Murray Beith Murray</i> 3 Glenfinlas Street
Pairman Easson & Miller SSC	50 Queen Street	Incorporated in <i>Drummond Miller</i> (above)
J & R A Robertson WS	30 Queen Street	15 Great Stuart Street
Simpson & Marwick WS	18 Heriot Row	Albany House, 58 Albany Street
Skene Edwards & Garson WS	5 Albyn Place	Incorporated in <i>Morton Fraser</i> , 1 September 2008
Steedman Ramage & Co, WS	6 Alva Street	Incorporated in <i>Biggart Baillie</i> (above) 2001
Stuart & Stuart WS	56 Frederick Street	23 Rutland Street
Sturrock & Sturrock SSC	34 Castle Street	<i>Sturrock &amp; Armstrong</i> 16 Young Street

Tods Murray & Jamieson WS	66 Queen Street	<i>Tods Murray</i> Edinburgh Quay, 133 Fountainbridge
Andrew Urquhart, SSC	7 Dundas Street	<i>A &amp; W M Urquhart</i> 16 Heriot Row